



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

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

MATTER OF V-I- INC.

DATE: NOV. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer, seeks to permanently employ the Beneficiary in the United States as a senior legacy systems field service engineer. 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 Nebraska Service Center denied the petition, concluding 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 motion, the Director affirmed the petition’s denial.

On appeal, the Petitioner asserts that the Beneficiary’s post-baccalaureate experience should be measured from the time he completed his course of studies and not from when the diploma itself was later issued.

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

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 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 may file an immigrant visa petition with U.S. Citizenship and

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’ requisite experience by the date the labor certification was filed.

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 petition, 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).

II. ANALYSIS

A. Advanced Professional Classification

As noted above, in order 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 possess five years of qualifying post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3).

The Beneficiary possesses a *Titulo* degree in electrical and mechanical engineering from the [REDACTED] Mexico. There is no question that this degree is a foreign degree that is equivalent to a U.S. bachelor’s degree and that the Beneficiary’s post-degree experience would qualify as progressive experience for purposes of EB-2 classification. At issue here is whether the Beneficiary’s five years of experience is measured only from when he received the formal *Titulo* in 2008 or from when he completed the class work for the degree in 1997. We conclude that, based on the specific circumstances and evidence in this case, the *Titulo* itself constitutes the official academic record of the Beneficiary’s “degree” for purposes of calculating the five-year period of post-graduate experience.

Several dates are important to this case. The priority date for this petition is July 23, 2013. The university issued the Beneficiary transcripts and a certificate on January 23, 1998, confirming that he completed four years of educational coursework in December 1997. However, the Beneficiary did not receive his formal degree diploma until October 9, 2008. The Director held that only experience gained after the formal degree diploma was issued in October 2008 could be considered and thus found that the Beneficiary could not have gained five years of experience between that date and the July 23, 2013, priority date of the petition.

On appeal, the Petitioner maintains that the Beneficiary accrued the requisite five years of post-degree experience if we recognize that his foreign equivalent degree was conferred on the earlier date that he completed his coursework, or 1997.

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 simply 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 the 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 will bear the burden to establish that all of the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body.⁴

In support of its claim, the Petitioner included the following evidence:

- The Beneficiary’s diploma, with English translation, for a *Titulo* in Mechanical and Electrical Engineering issued by the [REDACTED] in Mexico on October 9, 2008;
- The Beneficiary’s academic transcripts, with English translation, showing he completed four years of academic coursework at [REDACTED] in December 1997;
- The Beneficiary’s *Generación* dated January 30, 1998, and his *Carta Pasante* dated April 22, 1998;
- A credentials evaluation prepared by [REDACTED] for [REDACTED]. After examining the Beneficiary’s academic credentials, [REDACTED] concluded that the Beneficiary completed a bachelor’s level program that is the “foreign equivalent of a Bachelor of Science Degree with dual major in Electrical Engineering and Mechanical Engineering;”

² A provisional certificate from a college or university may establish a beneficiary’s possession of a required degree as of the certificate’s date. *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017). A petitioner, however, must establish that, as of the certificate’s issuance, the beneficiary completed all substantive degree requirements and the school approved the degree. *Id.* 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://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-1/0-0-0-26573/0-0-0-31107.html> (last visited August 30, 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, petitioners must also submit a copy of a beneficiary’s statement of marks or transcript to demonstrate years of study and coursework completed. 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).

- An advisory evaluation from [REDACTED] of the [REDACTED] asserting that by December 1997, the Beneficiary had completed academic coursework that is the foreign equivalent to a U.S. bachelor's degree; and
- An evaluation and opinion letter from [REDACTED] of [REDACTED] who makes conclusions similar to those in [REDACTED] letter.

On appeal, the Petitioner emphasizes that the evaluations it has provided from [REDACTED] and [REDACTED] establish that the Beneficiary's academic coursework at the [REDACTED] is the academic equivalent of a U.S. bachelor's degree in engineering. Specifically, [REDACTED] and [REDACTED] assert that a U.S. bachelor's degree consists solely of completion of academic programs but in Mexico, students are issued documentation confirming they have completed all of the academic requires of bachelor's programs but are not issued *Titulo* degrees until they complete various non-academic requirements. Accordingly, they conclude that the Beneficiary's academic documentation establishes that he has the foreign equivalent of a U.S. bachelor's of science as of 1997, based on his academic coursework. USCIS may treat a credentials evaluation as an advisory opinion. *Matter of Caron Int'l. Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). If an evaluation is inconsistent with other evidence or "is in any way questionable," however, USCIS may reject it or give it lesser evidentiary weight. *Id.* Consequently, in this case the record demonstrates that, as of December 1997, the Beneficiary had completed the class work for his degree; however, as discussed below, it does not establish that he completed the other substantive requirements and that a degree was approved and awarded by the university until 2008.

[REDACTED] asserts that U.S. colleges and universities accept the *Pasante* certificates as representing attainment of a bachelor's-level degree and admit student holders of the *Pasante* to graduate study programs. He submits documents showing what appear to be the 2015 graduate admission requirements for certain programs at schools such as [REDACTED] and the [REDACTED]. Although some of the documents indicate that a *Pasante* may be submitted when applying for graduate admissions, they do not establish that any of the colleges or universities consider the *Pasante* to be equivalent to a four-year U.S. bachelor's degree, or that any of them reviewed the Beneficiary's own *Pasante* and related transcript and determined that his *Pasante* is the equivalent of a U.S. bachelor's degree.

[REDACTED] also cites to information publicly available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),⁵ and claims that information from EDGE indicates that a Mexican *Pasante* certificate traditionally functions in lieu of a *Titulo*, and that the differences between the two are "academic." However, the archived study on Mexican education published in 1982, on which

⁵ AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries." <http://www4.aacrao.org/centennial/about.htm> (last visited October 31, 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 October 31, 2017).

██████████ relies, does not support his conclusion. Rather, the study emphasizes the distinction between the *Pasante* and the *Licenciatura* or *Título*, stating:

Degree requirements usually include successful completion of all coursework, as well as a period of *servicio social* (social service), a thesis, and an *examen profesional* (professional examination).

....

A student who has completed all the requirements is known as an *egresado pasante* . . . [and] is able to obtain a *certificado de estudios* (transcript) indicating completion of the coursework part of the program. The *egresado pasante* can also obtain a letter from the institution indicating that a certain amount of coursework has been completed. This letter is known as a *carta de pasante* . . . [but it] may sometimes be issued to students who have completed a certain percentage of but not all of a given program. . . . Care must also be taken with the *carta de pasante* since it often resembles an official *título*.

...

To establish something less than actual completion of the *licenciatura* degree - that is, *egresado pasante* status – as equivalent to the bachelor’s degree in the United States would be to ignore the differences between the traditional degree programs and those which have made substitutions for the traditional degree requirements.

Based on the above, ██████████ own materials caution against acceptance of the *Pasante* as equivalent to a *Licenciatura*, *Título*, or a U.S. bachelor’s degree. Moreover, as the Director noted in both the original decision and on motion, AACRAO EDGE currently states the following in regard to *Titulos*:

Simply completing a *Licenciatura* program does not automatically entitle a student to receive the *Título de Licenciado* (Title of Licentiate) or *Título Profesional* (professional title), which is the *SEP*-sealed and approved document that declares the conferral of the degree. To receive the *Título* (title), students must complete all coursework in the *plan de estudios* (degree plan), and usually a thesis, a period of social service, and a professional examination. The social service is typically 6 months, except for medicine which is 12 months. If the graduation requirements are not met, the document that confirms the completion of the academic program is the *Carta de Pasante* (Certificate of Passing). This document alone only confirms completion of the *plan de estudios* (degree plan) and should not be considered a substitute for the *Título*. Certificates / diplomas referring to *Generación + years*

designate that the bearer is a member of a particular Class (such as the Class of 2008); these do not establish completion of coursework, much less degree conferral.⁶

Accordingly, EDGE indicates that a *Titulo* and *Pasante* are not interchangeable, and that only the *Titulo* should be considered a degree equivalent to a U.S. bachelor's degree. It appears that the Beneficiary completed the underlying coursework for his degree plan as of December 1997, but not the remaining substantive requirements for the degree. As such, the record does not demonstrate that the substantive requirements for the degree were met or that the university approved the Beneficiary's degree until the issuance of the Beneficiary's *Titulo*. As the *Titulo* was not conferred until October 9, 2008, we may only consider qualifying work experience he gained between that date and July 2013, which is less than five years. Therefore, the Petitioner has not established that the Beneficiary meets the requirements for EB-2 classification.

B. Requirements of the Labor Certification

The Beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Here, the labor certification shows that the minimum educational and experience requirements of the job offered are a bachelor's degree in electrical engineering, mechanical engineering, or a related field of study and 60 months of experience. In the alternate, the labor certification shows the Petitioner will accept applicants with a master's degree and three years of experience. The Petitioner does not assert nor does the record establish that the Beneficiary possess the alternate requirements. Rather, the Beneficiary is attempting to qualify for the position on the basis on a bachelor's degree and five years of post-baccalaureate experience. However, for the reasons discussed above, we find that the Beneficiary did not have a minimum of five years of qualifying post-baccalaureate employment experience required on the labor certification, as of the visa petition's priority date.

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum experience requirements of the labor certification and the requested classification. For these reasons, the petition may not be approved.

ORDER: The appeal is dismissed.

Cite as *Matter of V-I- Inc.*, ID# 792856 (AAO Nov. 28, 2017)

⁶ See *Mexico Overview*, AACRAO, <http://edge.aacrao.org/country/overview/mexico-overview> (last visited October 31, 2017).