



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

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

MATTER OF M-P- INC.

DATE: OCT. 25, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a “TV Commercialization/Theater” business, seeks to employ the beneficiary as a general manager. 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 employment-based immigrant 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 initially approved the petition, but following a notice of intent to revoke (NOIR) and a response from the Petitioner, the Director subsequently revoked the approval on two grounds: (1) the Petitioner did not establish that the Beneficiary is working in a managerial capacity, as claimed, and (2) the Petitioner did not establish that the Beneficiary was not employed with other employers at the same time she was employed by the Petitioner. The Director denied a motion to reconsider, finding that it did not overcome the grounds for revocation.

On appeal the Petitioner submits a brief and asserts that the revocation of the petition’s approval was incorrect because the Director misconstrued the law and the evidence of record. Upon *de novo* review, we will sustain the appeal.

To be eligible for the requested advanced degree professional classification, the beneficiary must possess, and the job must require, a master’s degree or a bachelor’s degree followed by five years of experience. To be qualified for the job offered the beneficiary must meet all of the educational, experience, and other requirements of the offered position as stated on the labor certification by the petition’s priority date. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg’l Comm’r 1977). In this case, the Beneficiary has the equivalent of a U.S. bachelor’s degree and claims to qualify for the offered job and requested classification based on her possession of more than five years of qualifying experience in the job offered.

As noted, after initially approving the petition, the Director found two grounds to revoke the approval of the petition. In reviewing the appeal, we find that the Director’s grounds for revocation are not substantiated by the record. First, the Director found that the Petitioner’s limited number of employees suggested that the Beneficiary would not be “performing in a managerial capacity” as “require[d] for the classification of advanced degree professional.” However, neither the act, nor the

regulations, nor the labor certification in this case require the Beneficiary to be employed “in a managerial capacity.”¹ Here, the Director imposed a requirement that does not exist for a petition of this type. Second, after citing evidence that the Beneficiary was a part owner of an unrelated business in the years 2009-2011, the Director found that the Petitioner did not establish that the Beneficiary was not employed by that company at the same time she was employed by the Petitioner (for whom she began working in 2008). We find the Director’s conclusions about the allegedly incomplete explanation of the Beneficiary’s business ownership during a one-and-a-half-year period she was also working for the Petitioner to be ill-founded, considering the evidence submitted by the Petitioner. Moreover, the Director did not articulate how his uncertainty concerning the Beneficiary’s involvement with another business impacts the Beneficiary’s qualifications for the job offered or how it is material to the requested benefit.

In accord with the above discussion, we find that the record does not support the Director’s revocation of the petition’s approval.

ORDER: The appeal is sustained.

Cite as *Matter of M-P- Inc.*, ID# 599742 (AAO Oct. 25, 2017)

¹ On motion, the discussion of the first ground of revocation evolved from whether the Beneficiary is employed in a managerial capacity to a finding in the denial of the motion to reconsider that the Beneficiary did not have at least five years of experience supervising employees to meet the minimum requirement of the labor certification and to qualify for classification as an advanced degree professional. A revocation must be based on factual allegations made in the NOIR. See *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988). As the Director did not raise the issue of the Beneficiary’s experience in the NOIR, it cannot be a ground for revocation. Furthermore, we do not agree with the Director’s finding that the Beneficiary lacks the requisite experience. The record establishes that she has the five years of experience performing the duties of the offered position, as required by the labor certification and to meet the requirements to be classified as an advanced degree professional.