



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

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

MATTER OF A-C- LLC

DATE: OCT. 27, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electronic commerce company, seeks to employ the Beneficiary as a “Software Development Engineer in Test II.” 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” 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 Nebraska Service Center denied the petition on the grounds that the evidence of record does not establish that the Beneficiary had a bachelor’s degree and five years of post-baccalaureate experience as of the petition’s priority date, and therefore did not meet the minimum requirements of the labor certification and was not eligible for classification as an advanced degree professional. The Petitioner filed motions to reopen and reconsider, but the Director found that the grounds for denial had not been overcome and affirmed his denial of the petition.

On appeal the Petitioner submits a brief and supporting documentation. The Petitioner contends that the date of the Beneficiary’s bachelor’s degree should be considered the date he passed his final examination. Based on the earlier date of his final examination, the Petitioner asserts that the Beneficiary had more than five years of qualifying post-baccalaureate experience, thereby meeting the minimum requirements of the labor certification and making him eligible for classification as an advanced degree professional.

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).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, the

¹ The date the labor certification is filed is called the “priority date.” *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

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. *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. 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.

A petition for an advanced degree professional must be accompanied by documentation showing that the Beneficiary is a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(1). An “advanced degree” is defined 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).

A beneficiary must have all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158 (Act. Reg’l Comm’r 1977).

II. ANALYSIS

The Petitioner’s Form I-140, Immigrant Petition for Alien Worker, was accompanied by a photocopied ETA Form 9089, Application for Permanent Employment Certification (labor certification),² with a priority date of September 17, 2015. The labor certification specifies in section H that the minimum requirements for the job offered are either (1) a master’s degree in computer science, computer or electrical engineering, mathematics, or a related field, or a foreign educational equivalent, plus 12 months of experience in the job offered or as a software engineer, tester, or a related occupation, or (2) a bachelor’s degree in one of the identified fields of study, or a foreign educational equivalent, and five years of experience in the job offered or one of the alternate occupations.

The Petitioner also specified that one year of experience must involve designing, implementing, documenting, and maintaining test automation programs for large-scale, distributed software systems or applications using Java, C++, or SQL.

In sections J and K of the labor certification the Petitioner asserted that the Beneficiary meets the labor certification requirements, and is eligible for classification as an advanced degree professional, based on the combination of a bachelor’s degree and five years of qualifying experience – specifically, a bachelor’s degree in computer engineering from [REDACTED] in [REDACTED]

² The original ETA Form 9089 was re-submitted to USCIS with a later-filed Form I-140 petition in which the Petitioner sought “EB-3” professional classification for the Beneficiary. This petition (receipt number [REDACTED]) was approved on July 20, 2016.

India, and over five years of qualifying experience as a lead engineer with [REDACTED] in India and [REDACTED], and with the Petitioner as a “Software Development Engineer Test I.”

The record establishes that the Beneficiary’s degree is equivalent to a U.S. bachelor’s degree in computer engineering, an acceptable field of study on the labor certification, and that the Beneficiary possesses the claimed experience, which qualifies as progressive experience in the specialty within the meaning of 8 C.F.R. § 204.5(k)(2). The remaining issue, however, is whether the Beneficiary had five years of post-baccalaureate experience by the priority date. The resolution of this issue rests on *when* the Beneficiary’s degree was conferred by [REDACTED]. Evidence of the Beneficiary’s education includes copies of the following documents:

- Transcripts from [REDACTED] the last of which was dated October 12, 2010, showing that the Beneficiary’s Bachelor of Technology program comprised eight semesters of study over a four-year time period and that the Beneficiary passed the examination taken at the end of the eighth semester in June 2007.
- A diploma from [REDACTED] dated December 31, 2010, certifying that the Beneficiary had obtained a “Bachelor of Technology (Computer Engineering)” after “having passed the examination for the said degree held in June 2007.”
- A “Provisional Certificate” from [REDACTED] dated January 17, 2011, stating that the Beneficiary had “passed the Bachelor of Technology (Computer Engineering) Examination . . . in June 2007.”
- A letter from [REDACTED] on the letterhead of the assistant registrar, dated May 20, 2016, certifying that the Beneficiary passed all of his semester examinations, that the final examination was completed in June 2007, that the Beneficiary “completed all requirements for his degree” in June 2007, and that his degree was formally issued in December 2010.

In denying the petition, the Director found that the Beneficiary’s degree was conferred on the date his diploma was issued, December 31, 2010, and determined that the Beneficiary did not have five years of qualifying post-baccalaureate experience up to the priority date of September 17, 2015. The Petitioner asserts on appeal that the Beneficiary’s degree should be dated from the time he completed his last examination in June 2007, which would give him more than eight years of qualifying post-baccalaureate experience by the priority date, thus meeting the minimum experience requirement of the labor certification and making him eligible for advanced degree professional classification. The Petitioner points out that both the diploma and the provisional certificate state that the final examination was passed in June 2007, and that the assistant registrar’s letter states that the Beneficiary completed all requirements for his degree in June 2007.

The statute and regulations governing the EB-2 classification speak in terms of “degrees,” not diplomas. We do not 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.³ 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).⁴

Accordingly, we conduct a case-specific analysis to determine when the individual has completed all substantive requirements to earn the degree and when the university has approved the degree. In determining whether a document is an official academic record that substantiates the claimed degree, we may consider whether the document was issued by the university in the normal course of its business; whether the document was originally issued contemporaneously with events; and whether the document indicates that all requirements for the degree, in addition to the required coursework, have been completed. A petitioner bears the burden of establishing that a beneficiary has met all substantive requirements for the degree and that the degree was in fact approved by the responsible university body.⁵

In this case, while the evidence indicates that the Beneficiary completed his coursework and examinations by June 2007, there was no documentary confirmation from [REDACTED] that the Beneficiary had completed all requirements for the degree and that his degree was approved by a responsible university body until the Bachelor of Technology (Computer Engineering) diploma was issued on December 31, 2010. Although a provisional certificate would be evidence that an individual has completed all requirements for a degree, it is ordinarily issued before a formal diploma. The Provisional Certificate issued to the Beneficiary is dated January 17, 2011, which was 17 days after the date of his diploma. The Petitioner has provided no explanation as to why the Provisional Certificate postdates the formal diploma which had already been awarded on December 31, 2010. Given its inexplicable date, the Provisional Certificate has little probative value in this proceeding.

As for the transcript of the Beneficiary’s eighth and last semester, which listed his course marks and confirmed that he passed the semester examination in June 2007, it makes no mention of the Beneficiary having fulfilled all the requirements for a degree and being approved for a degree in

³ See *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017); 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) at 2, <https://uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-26573/0-0-0-31107.html> (last visited September 6, 2017), (“Whether the alien beneficiary actually 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).

⁴ 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.

⁵ Along with any other proffered evidence, petitioners must also submit a copy of the 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).

June 2007. Even if we viewed the eighth semester transcript as an official academic record substantiating the Beneficiary's claim to a bachelor's degree, it was not dated and issued until October 12-13, 2010, which was less than five years before the priority date of September 17, 2015. Thus, the Beneficiary could not have accumulated enough post-baccalaureate experience to meet the minimum experience requirement of the labor certification and to qualify for classification as an advanced degree professional.

Turning to the assistant registrar's letter, dated May 20, 2016, it lists the dates the Beneficiary was declared to have passed each of his semesters, the last being the eighth semester on August 27, 2007, states that the Beneficiary completed his final examinations and all requirements for his degree in June 2007, and confirms that his degree was formally issued in December 2010. While the letter did state that the Beneficiary completed his examinations and all other requirements for the degree in June 2007, the letter was not issued contemporaneously with events or in the normal course of the university's business, but rather in response to the Beneficiary's request for the purpose of this proceeding. The letter was issued nine years after the Beneficiary completed his coursework and examinations and close to five and a half years after the date of his diploma. Since it was written so long after the fact, the assistant registrar's letter lacks the evidentiary weight that a document prepared before the issuance of the diploma in 2010 would have.

The Petitioner cites the evaluations of the Beneficiary's educational credentials by [REDACTED] of [REDACTED] and [REDACTED] as supporting its claim that the Beneficiary's degree from [REDACTED] should be dated from June 2007, when all coursework and examinations were completed, rather than December 31, 2010, when the diploma was awarded. Both evaluations point out that in India, due to administrative delays and other factors, a diploma may not be issued for a considerable period of time after the academic requirements for the degree have been completed. Accordingly, the [REDACTED] and [REDACTED] assert that the date of the Beneficiary's degree should be considered June 2007, when all coursework and examinations were completed. The [REDACTED] claims more specifically that "[t]he official transcripts, Provisional Certificate, and final Bachelor of Technology Degree diploma . . . confirm conclusively that [the Beneficiary] fully completed the Bachelor of Technology program as of June, 2007." As previously discussed, however, the official transcript of the Beneficiary's eighth and last semester was not issued until October 13, 2010, and did not state that the Beneficiary had completed all the requirements for a degree in June 2007. Furthermore, the Provisional Certificate dated January 17, 2011, and the Bachelor of Technology diploma dated December 31, 2010, while confirming that the Beneficiary had completed his final examination in June 2007, did not state that the Beneficiary had completed all the requirements for a degree and been approved by the university for a degree at any time prior to the issuance of the diploma on December 31, 2010.

Evaluations and expert opinions of academic credentials are utilized by USCIS as advisory opinions only. When they are not in accord with other information or in any way questionable, USCIS is not required to accept them or may give them less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). Although the [REDACTED] and [REDACTED] assert that in India the date on which a student completes the coursework and examinations for his or her degree is a better indicator of

degree completion than the date on which a diploma is issued, these opinions cannot serve as substitutes for the official academic record that the regulation at 8 C.F.R. § 204.5(k)(3)(i) requires to establish the date the Beneficiary's degree was awarded. Accordingly, these evaluations do not establish that the Beneficiary earned his bachelor's degree or that the degree was approved by [REDACTED] when the coursework and examinations were completed in June 2007.

The Petitioner asserts that the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),⁶ supports its claim that the Beneficiary's degree was completed in June 2007. While EDGE does advise that a four-year Bachelor of Technology degree in India is comparable to a U.S. bachelor's degree, it does not state that the degree necessarily dates from the time the final examination was taken. On the matter of provisional degree certificates issued by Indian universities, EDGE states:

The Provisional Degree Certificate is evidence of completion of all requirements for the degree in question, the name of the degree and the date upon which it was approved by the responsible university governing body, and is comparable to an official US academic transcript with a degree statement certifying completion of all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate at universities in the United States.⁷

EDGE additionally notes that some students never receive their "final Degree Certificate," but instead rely on the provisional degree certificate as evidence of degree completion. *Id.*

In this case, however, the Beneficiary's Provisional Certificate was not issued until January 17, 2011, which was after the diploma itself was issued on December 31, 2010. The Petitioner has not explained this chronological anomaly. In any event, the Provisional Certificate provides no evidence that the Beneficiary completed all requirements for his degree before the diploma was issued on December 31, 2010.

For all of the reasons discussed above, we conclude that the date of the Beneficiary's Bachelor of Technology (Computer Engineering) degree was December 31, 2010, the date the diploma was issued. Therefore, the Beneficiary did not have five years of qualifying post-baccalaureate experience by the priority date of September 17, 2015, as required to meet the minimum requirement of the labor certification and to qualify for classification as an advanced degree professional. Accordingly, we will affirm the Director's denial of the petition.

⁶ 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." www.aacrao.org/about (last visited September 6, 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 September 6, 2017).

⁷ See *India: Provisional Degree Certificate*, AACRAO, <http://edge.aacrao.org/country/credential/provisional-degree-certificate> (last visited September 6, 2017).

We also note that letters in the record confirming the Beneficiary's employment history, while describing the duties he performed in his previous jobs, do not state that the Beneficiary had one year of experience in the specific skills of "designing, implementing, documenting and maintaining test automation programs for large-scale, distributed software systems or applications using: Java, C++, or SQL," as required in section H, box 14, of the labor certification. For this additional reason the petition cannot be approved.

III. CONCLUSION

The Beneficiary did not complete five years of qualifying post-baccalaureate employment between the date his bachelor's degree was issued, December 31, 2010, and the priority date of September 17, 2015. Therefore, he does not meet the minimum experience requirement of the labor certification to qualify for the job offered and is not eligible for classification as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(B). Nor does the record establish that the Beneficiary has at least one year of experience with the specific skills identified at H.14 of the labor certification. On both of these grounds the petition cannot be approved. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of A-C- LLC*, ID# 836117(AAO Oct. 27, 2017)