



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

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

MATTER OF H-, INC.

DATE: SEPT. 15, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a mapping company, seeks to employ the Beneficiary as a senior software engineer. 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary met the minimum educational requirements for the job offered and for classification as an advanced degree professional. The Director also concluded that the Petitioner could not amend the petition to change the requested classification from advanced degree professional to skilled worker.

On appeal the Petitioner submits additional evidence and asserts that it made a clerical error in its classification request on the petition and should be allowed to change the request from advanced degree professional to skilled worker. The Petitioner also contends that the Beneficiary met the minimum educational requirements of the labor certification.

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 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

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.

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.

An “advanced degree” is defined at 8 C.F.R. § 204.5(k)(2) as “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate” or “a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.”

To be eligible for approval a beneficiary must meet all of the education, training, and experience requirements of 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

On its Form I-140, Immigrant Petition for Alien Worker, the Petitioner checked the box at Part 2.1.d indicating that the petition was being filed for an advanced degree professional. The petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), with a priority date of January 28, 2016. Section H of the labor certification specifies the education, training, and experience required to qualify for the job offered as follows:

- | | | |
|-------|---|--|
| 4. | Education: Minimum level required: | Master’s degree |
| 4-B. | Major Field of Study: | Computer science |
| 5. | Is training required in the job opportunity? | No |
| 6. | Is experience in the job offered required? | Yes |
| 6-A. | How long? | 24 months |
| 7. | Is an alternate field of study acceptable? | Yes |
| 7-A. | What field(s)? | Electrical engineering, computer engineering, or related field |
| 8. | Is an alternate combination of education and experience acceptable? | Yes |
| 8-A. | What level of education? | Bachelor’s degree |
| 8-C. | How much experience? | 5 years |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | Yes |
| 10-A. | How long? | 24 months |
| 10-B. | Acceptable alternative job title(s) | Full-Stack software developer or related occupation |

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in computer science from the [REDACTED] in [REDACTED] Brazil, completed in 2011. Section K of the labor certification lists three prior jobs held by the Beneficiary in the computer field from April 1, 2007, to April 1, 2014, before commencing work with the Petitioner on October 7, 2014.

The initial evidence submitted with the petition included the following evidence of the Beneficiary's education and experience:

- Copy of a diploma, with English translation, from [REDACTED] stating that the Beneficiary completed the Course of Computer Science on July 8, 2011, and was conferred the title of Bachelor in Computer Science (*Bacharel em Ciencia da Computacao*) on August 20, 2012.
- An "evaluation report" from the [REDACTED] dated March 20, 2014, asserting that the Beneficiary's [REDACTED] diploma is equivalent to a bachelor's degree in computer science from an accredited U.S. college or university.
- Letters from three IT companies located in or near [REDACTED] Brazil, stating that the Beneficiary was employed as a software engineering specialist by [REDACTED] from April 1, 2007, to August 1, 2011; a senior developer by [REDACTED] from August 1, 2011, to December 1, 2012; and a CTO by [REDACTED] from October 1, 2012, to April 1, 2014.

In response to a request for evidence (RFE) from the Director, the Petitioner requested that its petition be amended from an "EB-2" advanced degree professional to an "EB-3" skilled worker, asserting that the Beneficiary had the requisite experience and education under the terms of the labor certification to qualify for the job and for skilled worker classification.

In denying the petition, the Director determined that the request to amend the classification request to skilled worker would not be allowed because it would constitute a material change to the petition. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). The Director also found that the evidence submitted by the Petitioner did not establish that the Beneficiary's educational credential from [REDACTED] was equivalent to a U.S. bachelor's degree, which was the minimum educational requirement of the labor certification and the advanced degree professional classification.

A. Changing the Requested Classification

During the adjudication of an I-140 petition, a Petitioner may request that USCIS change the requested preference classification to correct a clerical error in Part 2 of the form. After receiving the request, the Director will determine whether to change the classification based on the facts of the case. However, on appeal, we cannot change the requested classification because the Director has already made a decision on the petition. *See* <https://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker> (last accessed September 13, 2017).

The Petitioner claims that it made a clerical error in its initial filing by selecting advanced degree professional rather than skilled worker as the requested classification. According to the Petitioner, the clerical error resulted from its use of software that auto-populated the information provided on the Form I-140. Although the Director incorrectly concluded that he could not change the requested classification during the adjudication of the petition under *Matter of Izummi*, based on the facts of this case, we agree with the decision to deny the request.

Specifically, in this case, the evidence in the record does not establish that the Petitioner intended to request the skilled worker classification at the time the petition was filed and simply made a clerical error. Not until responding to the Director's RFE did the Petitioner first request that it be allowed to change the classification request from advanced degree professional to skilled worker. Furthermore, the Petitioner stated that it was taking this action "[a]fter careful review and consideration of the issues raised in your RFE." The issues raised in the RFE related to whether the Beneficiary met the educational and experience requirements for classification as an advanced degree professional. The Petitioner did not allege any clerical error in its response to the RFE, and did not explicitly seek to amend its classification request to skilled worker based on a clerical error in the petition. Not until its appeal of the Director's decision did the Petitioner allege a clerical error in the petition. Therefore, that the original request for advanced degree professional classification does not appear to have been a clerical error.

Further, we are not able to change the requested preference classification on appeal because the Director has already issued a decision on the petition.

B. The Beneficiary's Educational Credentials

The Petitioner asserts that the Beneficiary's diploma from [REDACTED] meets the educational requirements on the labor certification and submits two new evaluations, one from [REDACTED] and a second from [REDACTED]. Both evaluations conclude that the diploma from [REDACTED] is equivalent to a bachelor's degree in computer science from an accredited college or university in the United States.

[REDACTED] evaluation reviews the Beneficiary's coursework at [REDACTED] and asserts that he was in a four-year bachelor's degree program, but this conclusion is not supported by documentation verifying either the substance or the duration of the Beneficiary's studies. The [REDACTED] evaluation is more specific and contains a listing of the courses and grades the Beneficiary allegedly compiled in an eight-semester, four-year academic program during the years 2006- 2008 and 2010-2011. Like [REDACTED] however, the [REDACTED] evaluation is not supported by documentation verifying the substance and duration of the Beneficiary's studies.

As previously discussed, the Petitioner's initial evidence included a copy of the Beneficiary's diploma from [REDACTED] which conferred the title of Bachelor in Computer Science. However, no official transcript or other record of the Beneficiary's courses and grades has been submitted in this

proceeding. Thus, the evidence of record does not confirm that the Beneficiary's academic program at [REDACTED] comprised eight semesters and four years of study.

As another resource to ascertain the U.S. equivalency of the Beneficiary's educational credential from [REDACTED] we refer to the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).² EDGE has an entry for *Titulo de Bacharel* which it describes as a bachelor's degree awarded upon completion of an academic program of three to five years in length. According to EDGE, a three-year degree is comparable to three years of university study in the United States, while a four- or five-year degree is comparable to a bachelor's degree in the United States. See [http://edge.aacrao.org/country/credential/\[REDACTED\]](http://edge.aacrao.org/country/credential/[REDACTED]).... (last visited September 8, 2017). Since the record does not establish the length of the Beneficiary's academic program at [REDACTED] we cannot conclude that the Beneficiary's *Titulo de Bacharel* in computer science is comparable to a bachelor's degree in the United States.

Thus, the Petitioner has not established that the Beneficiary has the minimum education required to meet the terms of the labor certification and to be eligible for classification as an advanced degree professional. Accordingly, the petition cannot be approved.

C. The Beneficiary's Post-Baccalaureate Experience

Petitioner has also not established that the Beneficiary possessed five years of post-baccalaureate experience by the priority date of January 28, 2016, as required for classification as an advanced degree professional and to meet the experience requirements of the labor certification. The Beneficiary's diploma from [REDACTED] was conferred on August 20, 2012, and states that he completed the computer science program on July 8, 2011. Regardless of whether we consider the Beneficiary's post-baccalaureate experience to have begun after July 8, 2011, or August 20, 2012, both of those dates are less than five years before the priority date of January 28, 2016. Moreover, the record indicates that the Beneficiary's last employment before commencing work with the Petitioner ended on April 1, 2014, and that the Beneficiary began working for the Petitioner as a senior software engineer on October 7, 2014. Since section J.21 of the labor certification states that the Beneficiary did not gain any qualifying experience with the employer in a substantially similar position to the job offered, none of the Beneficiary's experience with the Petitioner counts as qualifying experience.

Thus, the Beneficiary does not have the requisite five years of qualifying experience to be eligible for classification as an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(2) or to meet the experience requirements of the labor certification. For this additional reason the petition cannot be approved.

² 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).

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the foreign equivalent of a U.S. bachelor's degree in computer science and five years of post-baccalaureate experience, as required to meet the terms of the labor certification and for classification as an advanced degree professional. Finally, the requested visa classification cannot be changed from advanced degree professional to skilled worker on appeal. For these reasons, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of H-, Inc.*, ID# 846354 (AAO Sept. 15, 2017)