U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-I-S-, INC.

DATE: SEPT. 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a software developer and consultant, seeks to permanently employ the Beneficiary in the United States as a java software 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 Texas 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 she possesses the equivalent of an advanced degree.

On appeal, the Petitioner asserts that the Beneficiary's post-baccalaureate experience should be measured from the time she received a provisional certificate and not from when the diploma itself was later issued.

Upon *de novo* review of the record, we will withdraw the Director's decision and remand this matter for further proceedings consistent with this opinion.

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)-

[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.

(II) of the Act. Second, the employer may file 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.

For this advanced degree professional position, 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). 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 also possess five years of qualifying post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3).

II. ANALYSIS

A. Beneficiary's Degree

The Beneficiary possesses a bachelor's degree in engineering from [redacted] in [redacted] India. There is no question that this degree qualifies her for EB-2 classification and that her post-degree experience would qualify as progressive experience. The only question is *when* the university conferred the "degree" to the Beneficiary. At issue here is whether the Beneficiary's five years of experience is only measured from when she received the formal *diploma* itself, or earlier, when she completed all the requirements for the degree and received what is commonly termed a *provisional certificate* reflecting that her degree was approved. We conclude that, based on the specific circumstances and evidence in this case, the provisional certificate constitutes the official academic record of her "degree" for purposes of calculating the five-year period of post-graduate experience.

Several dates are important to this case. The Beneficiary's priority date (the date the labor certification was filed) is January 14, 2016. The university issued her a provisional certificate on August 22, 1996, but she did not receive her formal degree diploma until September 24, 2013. The Director held that only experience gained after the formal degree diploma was issued in September 2013 could be considered, and thus found that the Beneficiary could not have gained five years of experience between that date and the January 14, 2016, 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 her degree was conferred on the earlier date of her provisional certificate, or August 22, 1996.

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]

Here, the record demonstrates that by issuance of the provisional certificate in August 1996, the Beneficiary had completed all substantive requirements of her degree and the university had in fact approved the degree. The record contains the following university documents contemporaneous with the relevant events: (1) a copy of the Beneficiary's statement of marks showing she passed the final exams; (2) a copy of the Beneficiary's provisional certificate issued on August 22, 1996, which states that the Beneficiary "has completed the requirements for the Degree of Computer Science Engg [sic] Second Class . . . in the examination held in the month of February 1996;" and (3) a copy of the Beneficiary's diploma dated September 24, 2013.

Finally, we have turned to information publicly available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),[5] and note that it accords with the Petitioner's claim and evidence. On the matter of provisional certificates issued by Indian universities, AACRAO EDGE states:

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[2] *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/0-0-0-1/0-0-0-26573/0-0-0-31107.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)

[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 August 30, 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 August 30, 2017).

> 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.[6]

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

The provisional certificate, together with the statement of marks, demonstrates that the Beneficiary completed all the substantive requirements and that the university approved her degree. The final diploma here was simply a delayed formality. We find that the issuance of the provisional certificate conferred on the Beneficiary the foreign equivalent of a bachelor's degree on August 22, 1996. However, the petition remains unapprovable because the Petitioner has not established that the Beneficiary meets the minimum experience requirements of the labor certification and the requested classification.

B. Beneficiary's Experience

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 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)(l), (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 requires five years of qualifying experience.

The record in this case does not establish that the Beneficiary has the required experience to meet the terms of the labor certification or to establish that she has the equivalent of an advanced degree. The Petitioner claimed on the labor certification that the Beneficiary's post-baccalaureate employment experience was as a "project lead" at [redacted] in [redacted] India from September 2004, to August 11, 2006, and then as a programmer analyst at [redacted] from September 1, 2006, to January 31, 2015; however, prior petitions in the record present conflicting employment information for the time the Beneficiary claimed to be employed at [redacted]

In response to the Director's notice of intent to deny the petition raising this issue, the Petitioner claimed that the Beneficiary worked for [redacted] from September 2006 to March 2009, that [redacted] was renamed [redacted] and that it was later acquired by

[6] *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degreecertificate (last visited August 30, 2017).

Thus, the Petitioner asserts, the Beneficiary "in effect" was an employee of since September 2006. However, the evidence does not support the Petitioner's claim that the Beneficiary worked for a single employer from 2006 to 2015 for the following reasons.

The Petitioner provided IRS Forms W-2, Wage and Tax Statement, for the Beneficiary from 2006 to 2015, and these documents show that the Beneficiary worked for:

(1) in NJ from 2006 through 2008;
(2) in NJ in 2009;
(3) in NJ in 2010;
(4) in NJ from 2011 to 2013;
(5) in IL in 2014 and 2015; and
(6) in TX in 2015.

Although the Forms W-2 reflect that and shared a common address and Federal Employer Identification Number (EIN), the employers on the subsequent Forms W-2 have unique EINs and addresses that do not reflect they are affiliated with each other. The Petitioner also has not provided any evidence that or were acquired by in New Jersey or in Illinois, or that any of the entities for whom the Beneficiary worked beginning in 2010 are related. As a consequence, the Beneficiary's employment history as reflected on the labor certification and related employment verification letters remains inconsistent with the employment history presented in her prior petitions and even the more recently documented work history reflected in the Forms W-2. Based on this contradictory evidence, the Petitioner has not established what exactly the Beneficiary's actual employment history is, including where and for whom she worked after she came to the United States, what positions she held, what duties she performed for each entity, and whether or not she performed the progressively responsible duties required for the classification. As the Director did not address this remaining issue in his final decision, he must do so on remand.

III. CONCLUSION

For the reasons set forth above, we will withdraw the Director's decision and remand the matter to the Director to determine whether or not the Petitioner has established that the Beneficiary possesses the minimum post-baccalaureate progressive experience required by the terms of the labor certification and to qualify for the requested classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of C-I-S, Inc.*, ID# 851844 (AAO Sept. 28, 2017)