



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

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

MATTER OF B-C-A-B-S-

DATE: SEPT. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a health care insurance provider, seeks to employ the Beneficiary as an “Application Delivery Lead Sr.” 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 on the ground that the Beneficiary does not have the requisite educational degree to qualify for the job offered under the terms of the labor certification and to qualify for classification as an advanced degree professional.

On appeal the Petitioner submits a letter asserting that the Director’s decision was erroneous and that the Beneficiary has the requisite educational credential to meet the requirements of the labor certification and to qualify 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).<sup>1</sup> *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 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.

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<sup>1</sup> The date the labor certification is filed is called the “priority date.” *See* 8 C.F.R. § 204.5(d).

Under section 203(b)(2) of the Act immigrant classification may be granted to foreign nationals who hold advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The term “advanced degree” is defined in 8 C.F.R. § 204.5(k)(2) as follows:

*Advanced degree* means any 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.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A beneficiary must also meet all of the education, training, experience, and other requirements specified on the labor certification as of the priority date. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

## II. ANALYSIS

The Petitioner’s Form I-140, Immigrant Petition for Alien Worker, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), with a priority date of April 26, 2016. Section H of the labor certification specifies the following with respect to the education, training, and experience required to qualify for the job offered:

- |       |   |  |
|-------|---|--|
| 4.    | Education: Minimum level required:                                  | Bachelor’s degree  |
| 4-B.  | Major Field of Study:   | Computer Science or Information Systems                  |
| 5.    | Is training required in the job opportunity?                        | No   |
| 6.    | Is experience in the job offered required?                          | No   |
| 7.    | Is an alternate field of study acceptable?                          | Yes  |
| 7-A.  | What field(s) of study?   | Field related to Computer Science or Information Systems |
| 8.    | Is an alternate combination of education and experience acceptable? | No   |
| 9.    | Is a foreign educational equivalent acceptable?                     | Yes  |
| 10.   | Is experience in an alternate occupation acceptable?                | Yes  |
| 10-A. | How long?   | 60 months  |

10-B. Job titles of alternate occupations:

Application Delivery, Software Engineer, Computer Systems Analyst, or related

As summarized at H.14 of the labor certification, the minimum educational and experience requirements for the job are a bachelor's degree in computer science, information systems, or a related field followed by five years of experience in multiple IT capabilities and technologies.

In section J of the labor certification the Petitioner claims that the Beneficiary was awarded a bachelor's degree in engineering from the [REDACTED] in 2003, thus meeting the minimum educational requirement of the labor certification.

The Petitioner asserts that the Beneficiary meets the labor certification's educational requirement, and is eligible for classification as an advanced degree professional, based on his certificate of membership in the [REDACTED] which he earned upon passing Section A and Section B of the [REDACTED] also known as the [REDACTED] in December 2003. The Petitioner claims that this credential constitutes a bachelor's degree in engineering.

In denying the petition, the Director found that the associate membership certificate from the [REDACTED] is not a foreign equivalent degree to a U.S. baccalaureate degree. Therefore, at issue on appeal is whether the Beneficiary has the requisite bachelor's degree to comply with the terms of the labor certification and to qualify for the requested classification. We find that he does not.

The pertinent regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) states that a petition for an advanced degree professional must be accompanied by an official *academic* record showing that the Beneficiary has a U.S. baccalaureate *degree* or a foreign equivalent *degree*" (emphasis added). According to a transcript of the Beneficiary's examination marks issued by the [REDACTED] in 2009, the Beneficiary's passage of Section A and Section B of the [REDACTED] in 2003 is recognized by the government of India as "at par with a degree in Mechanical Engineering from and Indian university." The [REDACTED] transcript does not claim, however, that the associate membership certificate is the same as a degree. Nor does the associate membership certificate itself make such a claim. The [REDACTED] is not a college, university, or any other kind of degree-granting academic institution. While a certificate of associate membership in the [REDACTED] may be comparable to a U.S. baccalaureate or foreign equivalent degree for some purposes, it is not a foreign equivalent degree to a U.S. bachelor's as required under section 203(b)(2) of the Act and applicable regulations to qualify the Beneficiary for classification as an advanced degree professional.

In addition, the terms of the labor certification do not permit an individual to qualify for the position with anything other than a bachelor's degree. In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret

the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Our interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. In this case, the labor certification requires a U.S. bachelor's degree or a foreign educational equivalent. Since the Beneficiary's [REDACTED] associate membership certificate is not an educational degree, he does not meet the requirements of the labor certification.

### III. CONCLUSION

The Beneficiary does not have a U.S. baccalaureate degree or a foreign equivalent degree, as required to meet the minimum educational requirement of the labor certain and to qualify for classification as an advanced degree professional. Accordingly, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-C-A-B-S-*, ID# 641479 (AAO Sept. 28, 2017)