



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

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

MATTER OF R-P- INC.

DATE: SEPT. 29, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a software development and consulting 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 Texas Service Center denied the petition, concluding that the Petitioner had not established that the Beneficiary possesses a foreign degree that is equivalent to a U.S. bachelor's degree, as required for the requested classification. The Petitioner filed a motion to reopen and reconsider, and the Director again denied the petition.

On appeal, the Petitioner asserts that the Beneficiary has an education that is equivalent to a U.S. bachelor's degree.

Upon *de novo* review, we will dismiss the appeal.

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)-(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

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 a master's degree or bachelor's degree and the five years' requisite experience, and otherwise meet the terms of the labor certification, by the date the labor certification was filed.

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.

To be eligible for classification as an advanced degree professional, a beneficiary must possess a master's degree or a bachelor's degree with five years of qualifying post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3). The Beneficiary's degree must be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995); *see also APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).² Thus, the plain meaning of the Act and the regulations is that the beneficiary of an advanced degree professional petition must possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

II. ANALYSIS

A. Beneficiary's Education

The first issue is whether the Beneficiary possesses the minimum education required for classification as an advanced degree professional, specifically whether he has at a minimum, a U.S. bachelor's degree, or foreign equivalent degree from a college or university. On the labor certification, the Beneficiary listed his highest level of education as a bachelor's degree in mechanical engineering from "[redacted] in [redacted] [sic], India."³ Evidence of the Beneficiary's education includes:

1. A certificate from the State Board of Technical Education and Training, [redacted] showing the Beneficiary was awarded a diploma in mechanical engineering, based on his completion of a three-year, full-time diploma course of study at [redacted] as well as the underlying memoranda of marks;

² Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

³ This refers to an associate membership from the [redacted] (India).

2. The Beneficiary's provisional certificate issued by [REDACTED] (India) [REDACTED] showing he passed sections A and B of the Institution Examinations in the Mechanical Engineering Branch, and a subsequent formal certificate;
3. A certificate showing that the Beneficiary was elected as an associate in [REDACTED]
4. A credentials evaluation prepared by [REDACTED] of the [REDACTED]
5. An opinion letter from [REDACTED] a professor of computer information sciences at [REDACTED] and [REDACTED]
6. An opinion letter from [REDACTED] an associate professor in the computer systems technology department of the [REDACTED]

[REDACTED] stated that the Beneficiary's diploma in mechanical engineering from the [REDACTED] [REDACTED] is the equivalent of at least one year of academic studies toward a bachelor of science degree in mechanical engineering, and noted that [REDACTED] offers four-year programs of academic study comparable to bachelor's programs at universities in India. [REDACTED] and [REDACTED] asserted that, based on their review of the nature of the courses and examinations that the Beneficiary completed at [REDACTED] he has the equivalent of a bachelor of science degree in engineering at an accredited U.S. institution of higher education.

The Director concluded that the evidence did not demonstrate that the Beneficiary possesses a single, four-year bachelor's degree from a college or university, as required. Consequently, the Director found that the Petitioner did not establish that Beneficiary possesses the minimum educational requirements for classification as an advanced degree professional

On appeal, the Petitioner asserts that the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),⁴ shows that the Beneficiary's education is comparable to a U.S. bachelor's degree, contends that we have previously relied on information in EDGE in other decisions, and submits copies of some AAO decisions in which we cited to information from EDGE. Although the decisions that the Petitioner provided are unpublished, non-binding decisions, we agree with the Petitioner's suggestion that we should consider the relevant information from EDGE in this case.⁵

⁴ According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *About AACRAO*, <http://www.aacrao.org/home/about> (last visited Sept. 8, 2017). EDGE is "a web-based resource for the evaluation of foreign educational credentials." *AACRAO EDGE*, <http://edge.aacrao.org/info.php> (last visited Sept. 8, 2017). USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

⁵ In *Confluence International, Inc. v. Holder*, 2009 WL 825793 (D.Minn. Mar. 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. Aug. 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion.

Here, the Petitioner relies on the Beneficiary's [REDACTED] associate membership as being equivalent to a U.S. bachelor's degree. According to EDGE, [REDACTED] associate membership conferred upon passing the [REDACTED] Final Examination represents attainment of a level of education comparable to a bachelor's degree in the United States, and the educational evaluations submitted by the Petitioner indicate that this is their opinion as well. However, [REDACTED] is not an academic institution that can confer an actual degree with an official college or university record, as required by the relevant regulations. Because the Petitioner has not established that the Beneficiary's [REDACTED] associate membership is the foreign equivalent of a U.S. bachelor's degree issued by a college or university, the Petitioner has not established that the Beneficiary meets the minimum educational requirements for the requested classification.

B. Beneficiary's Experience

Although not discussed by the Director, we also find that the evidence provided by the Petitioner does not establish that the Beneficiary possesses the experience required by the terms of the labor certification or to establish that the Beneficiary has the equivalent of an advanced degree.⁶

Specifically, the evidence that the Petitioner provided regarding the Beneficiary's work experience contains contradictory information. On the labor certification, the Petitioner claimed that the Beneficiary's prior qualifying experience includes work as an SAB BPC consultant at [REDACTED] in [REDACTED] India from March 9, 2009, to November 18, 2011. In response to the Director's request for evidence (RFE) of the Beneficiary's prior qualifying experience, the Petitioner provided letters from the Beneficiary's prior employers, including one from '[REDACTED] [REDACTED]' attesting to the Beneficiary's employment from March 9, 2009, to November 18, 2011; however, the spelling of the company's name does not match that of the name provided on the labor certification, and the letter shows that the entity that issued the letter is located in [REDACTED] Georgia rather than [REDACTED]. For these reasons, the employment letter submitted in response to the RFE does not appear to have been prepared by the Beneficiary's claimed employer in [REDACTED] India. Based on the contradictory evidence regarding the Beneficiary's claimed employment, the letter does not support the labor certification and the Petitioner has not established that the Beneficiary has the claimed qualifying employment experience. In any future proceeding, the Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

⁶ The relevant regulations describe an advanced degree as including a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2).

C. Additional Concerns Regarding the Petitioner's Job Offer and Ability to Pay

As an additional matter that must be resolved in any further proceedings, the Maine Department of the Secretary of State, Bureau of Corporations, Elections and Commissions, indicates that the Petitioner is not in good standing to do business and was administratively dissolved on August 28, 2017. (See [https://icrs.informe.org/nei-sos-icrs/ICRS?CorpFilings=\[REDACTED\]](https://icrs.informe.org/nei-sos-icrs/ICRS?CorpFilings=[REDACTED]) last visited Sept. 11, 2017).

If the Petitioner is no longer in business, then no *bona fide* job offer exists and the petition is moot. Specifically, even if the petition were otherwise approvable, the approval of the petition would be subject to automatic revocation due to the termination of the Petitioner's business. See 8 C.F.R. § 205.1(a)(iii)(D). Moreover, if the Petitioner is not in business, it would not be able to demonstrate its continuing ability to pay the proffered wage from the priority date until the Beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). In any further proceeding, the Petitioner will be required to submit evidence from the Maine Department of the Secretary of State indicating that it is currently in good standing and authorized to do business, and that it has had the continuing ability to pay the proffered wage as of the priority date of the petition.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the minimum education or experience required for classification as an advanced degree professional. The Petitioner has also not demonstrated that the Beneficiary has the experience required by the terms of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of R-P- Inc.*, ID# 624442 (AAO Sept. 29, 2017)