



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

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

MATTER OF B-G-S-U-

DATE: AUG. 30, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a public university, seeks to employ the Beneficiary as an assistant professor of architecture. It requests her classification under the second-preference immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. organization to sponsor a foreign national for lawful permanent resident status to work in a position requiring at least a master’s degree, or a bachelor’s degree followed by five years of experience.

The Acting Director of the Nebraska Service Center denied the petition. Noting its stated acceptance of a bachelor’s degree without five years of following experience, the Director concluded that the accompanying certification from the U.S. Department of Labor (DOL) did not demonstrate the job’s need for an advanced-degree professional.

On appeal, the Petitioner submits copies of advertisements indicating that the position requires at least a master’s degree and asserts that the labor certification inadvertently misstated the job’s alternate requirements.

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

### I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, an employer must first obtain DOL certification. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL approves a position, an employer must next submit the labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a certified position meets the requirements of a requested immigrant classification. If USCIS approves a petition, a foreign

national may finally 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.

## II. THE LABOR CERTIFICATION REQUIREMENTS

Unless accompanied by an application for Schedule A designation or documentation of a beneficiary's qualifications for a shortage occupation, a petition for an advanced-degree professional must include a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(i). The job-offer portion of the labor certification "must demonstrate that the job requires a professional holding an advanced degree or the equivalent." *Id.* The term "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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

8 C.F.R. § 204.5(k)(2).

By examining the job-offer portion of an accompanying labor certification, USCIS must determine a position's minimum requirements. USCIS may neither ignore a labor certification term, nor impose additional requirements. See, e.g., *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the minimum requirements of the offered position of assistant professor as a U.S. doctorate, or a foreign equivalent degree, in architecture or a "closely related field." The labor certification states that the position does not require any training or experience. Part H.8 of the labor certification indicates "No" acceptable alternate combination of education and experience. But part H.14, "Specific skills or other requirements," states: "The requirement for this position is: Ph.D. in architecture or related field; or Master of Science degree or Bachelor of Science degree in architecture plus professional registration."

As the Director found, part H.14 of the labor certification states the Petitioner's acceptance of a bachelor's degree without five years of following experience. Contrary to 8 C.F.R. § 204.5(k)(4)(i), the labor certification therefore does not demonstrate the job's need for an advanced-degree professional.

On appeal, the Petitioner asserts the job's qualifications for EB-2 classification. The Petitioner contends that the position actually requires: a doctorate degree in architecture or a related field; a master of architecture degree and professional registration; or a bachelor of architecture degree "*and a Master's degree in a related field, plus professional registration.*"

The Petitioner asserts that its employee who prepared the labor application inadvertently omitted the above-emphasized clause from the alternate job requirements listed on the application form. As proof that the position requires at least a master's degree, the Petitioner submits a letter from a school director and copies of the university's advertisements for the offered position. The Petitioner states:

We acknowledge that the non-attorney staff member . . . who completed the [labor certification application] did make a mistake in transferring the alternate minimum requirements properly to the form. However, we believe this should be deemed to be a harmless technical error that should not serve as a basis for the denial of the EB-2 I-140 Petition.

Because of the claimed misstatement of the position's alternate requirements, the labor certification violates 8 C.F.R. § 204.5(k)(4)(i)'s mandate to demonstrate the job's need for an advanced-degree professional. We therefore disagree with the Petitioner's characterization of the purported misstatement as "a harmless technical error."

On appeal, the Petitioner seeks to change the terms of the labor certification in order to cure the deficient filing. However, the Petitioner's request to amend the labor certification's terms is barred by DOL regulations. *See* 20 CFR § 656.11(b) (barring modifications to labor certification applications submitted after July 16, 2007). We therefore decline to consider evidence of the Petitioner's intended requirements or allow modification to the minimum requirements stated on the labor certification. The plain language of the labor certification clearly states the Petitioner's acceptance of a "Bachelor of Science degree in architecture plus professional registration." *See, e.g., SnapNames.com, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, \*7 (D. Or. Nov. 30, 2006) (holding that "where the plain language of [the labor certification] requirements does not support the petitioner's asserted intent, [USCIS] does not err in applying the requirements as written"). As such, the labor certification does not support the requested classification.

Moreover, the record does not establish that the ads submitted by the Petitioner describe the offered position. The ads, which were placed in 2014, identify the position's start date as "August 2015." The labor certification, however, states the Beneficiary's selection for the offered position almost a year later, on July 7, 2016. Thus, the record does not demonstrate that the ads and the labor certification describe the same position.

For the foregoing reasons, the labor certification does not establish the offered position's need for an advanced degree professional. We will therefore affirm the Director's decision.

### III. THE BENEFICIARY'S QUALIFICATIONS

Although unaddressed by the Director, the record also does not demonstrate the Beneficiary's qualifications for the offered position. A petitioner must establish a beneficiary's possession of all

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DOL-certified job requirements by a petition's priority date.<sup>1</sup> *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

Here, as previously discussed, the labor certification states the minimum requirements of the offered position of assistant professor as: a doctorate in architecture or a related field; or a master of science or bachelor of science degree in architecture and professional registration. On the labor certification, the Beneficiary attested that, by the petition's priority date, she earned a U.S. doctorate in architecture.

Consistent with the Beneficiary's claim, the Petitioner submitted a copy of a doctor of philosophy diploma in her name from a U.S. university. The diploma, however, does not state her field of study. The record lacks other academic records. Thus, contrary to the requirements of the offered position, the record does not establish the Beneficiary's possession of: a doctorate in architecture or a related field; or a master of science or bachelor of science degree in architecture and professional registration.

#### IV. CONCLUSION

The record on appeal does not establish the labor certification's support for the requested classification of advanced degree professional, nor does it demonstrate the Beneficiary's qualifications for the offered position.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-G-S-U-*, ID# 1649384 (AAO Aug. 30, 2018)

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<sup>1</sup> This petition's priority date is November 15, 2016, the date the DOL accepted the accompanying labor certification application for processing. See 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).