



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

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

MATTER OF F-T-

DATE: AUG. 19, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a  seeks to employ the Beneficiary as an ET analyst senior. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. 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, as required, that the Beneficiary qualifies for the classification requested or the position offered because he does not have the required 60 months of progressive post-baccalaureate experience.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary meets the applicable requirements for the classification requested and the position offered.

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

#### I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

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 applies 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 priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is August 28, 2018. *See* 8 C.F.R. § 204.5(d).

## II. THE REQUIREMENTS OF THE OFFERED POSITION

A petitioner for an advanced degree professional must establish a beneficiary's possession of an "advanced degree." 8 C.F.R. § 204.5(k)(1). This term means "[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). Because the Petitioner requests the Beneficiary's classification as an advanced degree professional, the requisite experience must post-date his bachelor's degree. *See id.*

To demonstrate a beneficiary's possession of a bachelor's degree followed by the requisite five years of experience, a petitioner must provide "an official academic record" of the degree and letters from current or former employers describing the experience. 8 C.F.R. § 204.5(k)(3)(i)(B). A petitioner must also establish a beneficiary's possession of all DOL-certified job requirements by a petition's priority date. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The labor certification here states the minimum requirements of the offered position of ET analyst senior as a bachelor's degree followed by five years of experience. The record establishes the Beneficiary's possession of an Indian master's degree that equates to a U.S. bachelor's degree in a required field of study. With the petition and in response to the Director's request for evidence, the Petitioner submitted the following documentation regarding the Beneficiary's master's degree:

- Diploma dated November 29, 2013, from  University. It states that the Beneficiary was awarded a master of science degree and that he passed the qualifying examination held in May 2005.
- Consolidated Memorandum of Marks from  University dated November 28, 2013, showing the Beneficiary's years of passing his examinations between November 2003 and May 2005.
- Letter dated January 1, 2019, from the principal of the University College of Science at  University stating that the Beneficiary "completed" his master's degree in May 2005 and that he "delayed to request for certificate" until November 29, 2013.
- Transfer Certificate dated November 20, 2013, from  University indicating that the Beneficiary left college in 2004-2005 and that he "completed" his master of science in computer science.
- Memorandum of Marks dated July 27, 2005; February 9, 2005; July 20, 2004; and January 31, 2004, from  University. The statements show the results of the Beneficiary's examinations.

The Petitioner also documented the Beneficiary's possession of over ten years of progressive experience in the specialty, from July 5, 2006, to December 19, 2016.<sup>2</sup>

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<sup>2</sup> Labor certification employers generally cannot rely on experience that a foreign national gained with it. The record shows that Beneficiary started working for the Petitioner in the offered position of ET analyst senior while working in a temporary visa status. Here, because the Beneficiary's experience was gained in a position substantially similar to the

The Director, however, found that the Beneficiary’s post-baccalaureate experience was insufficient. Noting the November 29, 2013, date on the Beneficiary’s graduate diploma, the Director presumed the Beneficiary’s receipt of the diploma on that date. The Director therefore concluded that the Beneficiary’s experience from the diploma’s issuance in November 2013 did not meet the five-year amount required for the offered position and the requested classification. We agree.

The statute and regulations governing the EB-2 classification use the terms “degree” and “official academic record,” not “diploma.” For EB-2 “bachelor plus five” petitions, a petitioner must submit an “official academic record” showing that a beneficiary has a foreign equivalent “degree.” 8 C.F.R. § 204.5(k)(3)(i)(B). On appeal, the Petitioner cites the USCIS Adjudicator’s Field Manual (AFM), 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://uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-26573/0-0-0-31107.html> (last visited Aug. 7, 2019). The AFM states that “[w]hether 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.” Therefore, an “official academic record” is not limited to a diploma.<sup>3</sup> Accordingly, we must conduct a case-specific analysis to determine whether the Beneficiary completed all substantive requirements to earn the degree and whether the university approved the degree as demonstrated by an official academic record. When determining whether a document is an official academic record that substantiates a claimed degree, we may consider whether the document was issued by a university in the normal course of its business; whether the document was issued contemporaneous with events; and whether the document indicates that all degree requirements, not just the required coursework, have been completed.<sup>4</sup> The Petitioner bears 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.

On appeal, the Petitioner asserts that the Beneficiary was awarded/conferred his degree in May 2005, and that the November 29, 2013, date appearing on his diploma reflects the date he requested it, and not the date it was conferred. The Petitioner therefore asserts that the Beneficiary gained more than five years of post-baccalaureate experience starting in July 2006. Citing *Matter of O-A-, Inc.*, the Petitioner asserts that it has established that the Beneficiary completed all substantive requirements for his master’s degree in 2005. We disagree.

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offered position, the Petitioner cannot rely on that experience. See 20 C.F.R. §§ 656.17(i)(3)(i), (5)(ii) (allowing experience with an employer if gained in a position substantially different than the offered position). We therefore have not included that experience in our analysis of the Beneficiary’s qualifying experience.

<sup>3</sup> See *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017).

<sup>4</sup> For example, a university-issued provisional certificate issued contemporaneous with events (stating that all degree requirements, including required coursework, have been met) together with a statement of marks constitutes an official academic record that may demonstrate that a beneficiary completed all the substantive requirements for a degree and that the university approved the degree. *Matter of O-A-, Inc.*, Adopted Decision 2017-03 at 4. We further note that the provisional degree certificate in *Matter of O-A-, Inc.* was determined by AACRAO EDGE to be “evidence of completion of all requirements for the degree in question . . . and is comparable to an official U.S. academic transcript with a degree statement certifying completion of all requirements for the degree . . . .” See *India: Provisional Degree Certificate*, AACRAO, <http://edge.aacrao.org/country/credential/provisional-degree-certificate> (last visited Aug. 7, 2019). Although the Beneficiary’s provisional certificate for his bachelor’s degree was submitted to the record, a provisional certificate for his master’s degree was not similarly submitted.

In *Matter of O-A-*, although the beneficiary received a bachelor's diploma from an Indian university in 2007, we measured her post-degree experience from the date of a "provisional certificate" the university issued her in 2006. *Id.* at 5. Thus, we found that the provisional certificate - together with the beneficiary's marks statements and a letter from a school official explaining the administrative delay in the issuance of her diploma - established her satisfaction of all substantive degree requirements and her school's approval of the degree before the issuance of her degree diploma. *Id.*

Unlike in *Matter of O-A-*, the Petitioner here has not provided a provisional certificate or similar evidence establishing that, before the issuance of the master's degree diploma, the Beneficiary satisfied all substantive degree requirements. Instead, the record contains the Beneficiary's consolidated and individual memorandum of marks. Although a university-issued statement of marks is an official academic record, the Beneficiary's marks statements alone do not demonstrate the Beneficiary's completion of the degree requirements in May 2005. The Beneficiary's marks statements simply confirm when he took his examinations, and the consolidated marks statement confirms that he took the final examinations for his degree in May 2005.

The record also contains a letter dated January 1, 2019, from the principal of the University College of Science at [redacted] University stating that the Beneficiary "completed" his master's degree in May 2005 and that he "delayed to request for certificate" until November 29, 2013. Further, on appeal, the Petitioner submits an additional letter dated March 27, 2019, from the principal of the University College of Science at [redacted] University stating that the Beneficiary "completed/awarded/conferred" his master's degree in May 2005; that although the degree was completed in 2005, the Beneficiary "delayed to request for certificates" until November 29, 2013; and that it "is common for some students to request their certificates subsequent to the degree completion/conferral date." The two principal's letters are not official academic records substantiating that the claimed degree was awarded prior to the diploma date. The letters, written over 13 years after the Beneficiary's purported completion of the degree, were issued in response to the Beneficiary's inquiries, not in the university's normal course of business. Further, the letters state only that the Beneficiary "completed" and "completed/awarded/conferred" his master's degree in May 2005; they do not state that all degree requirements were completed in May 2005. Therefore, the letters do not demonstrate the Beneficiary's completion of all substantive degree requirements as of May 2005.

The record contains a transfer certificate dated November 20, 2013, from [redacted] University indicating that the Beneficiary left college in 2004-2005 and that he "completed" his master of science in computer science. The Petitioner also submits on appeal a "Bonafide Certificate" and a "Certificate of Character" dated November 20, 2013, from [redacted] University stating that the Beneficiary was a student in the master of science program during the 2003-2005 academic years. Like the principal's letters, the certificates were issued outside the university's normal course of business, and they do not certify the Beneficiary's completion of all substantive degree requirements as of May 2005.

As additional proof that the Beneficiary's degree preceded the diploma's issuance, the Petitioner cites an evaluation of his educational credentials. The evaluation states that the Beneficiary's master's degree was awarded in 2005, and that his paper diploma was issued in 2013. As we held in *Matter of O-A-*, however, to establish a degree's precession of a diploma, a petitioner must provide "case-

specific” evidence of a beneficiary’s prior completion of all degree requirements and the issuing school’s approval of the degree, documented by an official academic record. *Matter of O-A-*, at \*3. Here, as previously discussed, the Petitioner has not established the occurrence of those events before the issuance of the Beneficiary’s diploma in November 2013. The submitted documentation indicates the Beneficiary’s completion of coursework and passage of a final examination in 2005. But, unlike in *Matter of O-A-*, the record does not establish the Beneficiary’s satisfaction of all degree requirements at any time prior to the diploma’s issuance in 2013. Nor does the Petitioner explain the over eight-year delay in the issuance of his degree diploma.

On appeal, the Petitioner also cites *Productivity Improvements, Inc.*, 86-INA-671 (BALCA 1988), a DOL Board of Alien Labor Certification Appeals (BALCA) case. In *Productivity Improvements, Inc.*, BALCA determined that although the beneficiary had not officially been awarded her degree when she began working for the petitioning employer, she had met all of the degree requirements and was merely waiting for the university to confer her degree at the end of the next academic quarter. The Petitioner does not explain how the DOL’s BALCA precedent is binding on the AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, BALCA decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Further, as discussed herein, the Petitioner here has not established the Beneficiary’s satisfaction of all degree requirements at any time prior to the diploma’s issuance in 2013.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary’s possession, by the petition’s priority date, of the requisite five years of post-baccalaureate experience required for the offered position. We will therefore affirm the Director’s decision.

### III. ABILITY TO PAY

Although not addressed by the Director in his decision, the record does not contain regulatory required evidence of the Petitioner’s ability to pay the proffered wage from the priority date on August 28, 2018, and continuing until the beneficiary obtains lawful permanent residence.<sup>5</sup> The regulation at 8 C.F.R. § 204.5(g)(2) requires that “[e]vidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.”

The Petitioner submitted the 2017 annual report for <sup>6</sup> However, the record does not contain regulatory-prescribed evidence of the Petitioner’s ability to pay for 2018. Without this regulatory-required evidence, we cannot affirmatively find that the Petitioner has the continuing ability to pay the proffered wage from the priority date. For this additional reason, the petition cannot be approved.

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<sup>5</sup> The annual proffered wage is \$69,500.

<sup>6</sup> We note that the annual report does not contain the Petitioner’s separate financial information. Because a corporation is a separate and distinct legal entity, the assets of other enterprises cannot be considered in determining the Petitioner’s ability to pay the proffered wage. See *Matter of Aphrodite Invs., Ltd.*, 17 I&N Dec. 530 (Comm’r 1980). In a similar case, the court in *Sitar v. Ashcroft*, No. Civ. A. 02-30197-MAP, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, “nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage.”

*Matter of F-T-*

#### IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-T-* , ID# 05766369 (AAO Aug. 19, 2019)