



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

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

In Re: 6959507

Date: DEC. 2, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as an IT [Information Technology] development leader. It requests her classification under the second-preference, immigrant visa category for members of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the minimum educational requirements of the requested classification and the offered position.

The Petitioner bears the burden of establishing eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *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 an offered position. *Id.* DOL also considers whether employment of a foreign national will harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If 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 determines whether a beneficiary meets the requirements of a DOL-certified position and a requested visa classification. If USCIS grants 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 EDUCATIONAL REQUIREMENTS

Advanced degree professionals must have “advanced degrees or their equivalent.” Section 203(b)(2)(A) of the Act. 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.

8 C.F.R. § 204.5(k)(2).

Also, a petitioner must establish that a beneficiary met all DOL-certified job requirements of an offered position by a petition’s priority date.¹ *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977). In evaluating a beneficiary’s qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position’s minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir.1983) (holding that “DOL bears the authority for setting the *content* of the labor certification”) (emphasis in original).

Here, the labor certification states the primary requirements of the offered position of IT development leader as a U.S. master’s degree or a foreign equivalent degree in computer science, plus three years of experience in the job offered or in a position using certain programming languages and technologies. The labor certification also states the Petitioner’s acceptance of an alternate combination of education and experience in the form of a bachelor’s degree and five years of experience.

On the labor certification, the Beneficiary attested that, by the petition’s priority date, an Indian university awarded her a bachelor’s degree in computer science. In support of the Beneficiary’s claims, the Petitioner submitted copies of a diploma and marks memoranda from the university. The documents indicate that the Beneficiary studied three years to obtain a bachelor of science degree. The Petitioner also submitted an independent evaluation of the Beneficiary’s foreign educational credentials. The evaluation states that, alone, the Beneficiary’s bachelor’s degree equates to three years of U.S. university studies. The evaluation concluded, however, that, based on a combination of the Beneficiary’s education and later employment experience, she has the equivalent of a U.S. bachelor of science degree in computer science.

As the Director found, the Petitioner’s evidence does not demonstrate the Beneficiary’s educational qualifications for the requested visa classification of advanced degree professional. An advanced degree professional must have at least “[a] United States baccalaureate degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(2). The record establishes the Beneficiary’s possession of a foreign bachelor’s degree. Contrary to the regulation, however, the Petitioner has not demonstrated

¹ This petition’s priority date is October 31, 2018, the date 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).

that the Beneficiary's degree is "equivalent" to a U.S. baccalaureate. The evaluation submitted by the Petitioner finds the Beneficiary's degree equivalent to three years of U.S. university studies. U.S. bachelor's degrees usually require four years of study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977).

Also, the Petitioner has not demonstrated the Beneficiary's possession of the minimum educational requirements of the offered position. Part H.8-A. of the labor certification indicates the Petitioner's acceptance of a "Bachelor's" degree for the position. If the Petitioner was willing to accept an educational credential less than a bachelor's degree, it could have indicated "Associate's" degree or "High School" diploma in part H.8-A. Or it could have indicated "Other" and, in part H.8-B., specified its acceptance of a baccalaureate equivalency based on a combination of education and experience. By choosing "Bachelor's" degree in part H.8-A., however, the Petitioner indicated that the Beneficiary must have at least a U.S. bachelor's degree or a foreign degree equating to one.

On appeal, the Petitioner argues that the regulation defining the term "advanced degree" misinterprets the Act and impermissibly limits benefits otherwise granted by Congress. The Petitioner notes that Congress made immigrant visas available to professionals "holding advance degrees *or their equivalent*." Section 203(b)(2)(A) of the Act (emphasis added). The Petitioner asserts that the phrase "or their equivalent" includes baccalaureate equivalencies based on experience or combinations of education and experience. The Petitioner also argues that a regulation for H-1B nonimmigrant visas allows such baccalaureate equivalencies. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), however, applies only to H-1B nonimmigrant visas. The regulation states that baccalaureate equivalencies based wholly or partially on experience are "[f]or purposes of paragraph (h)(4)(iii)(C)(4) of this section." 8 C.F.R. § 214.2(h)(4)(iii)(D). Such experience-based equivalencies do not support advanced degree professional classification in immigrant visa proceedings. Moreover, when the former Immigration and Naturalization Service (INS) proposed regulations for advanced degree professionals, stakeholders decried the rules' disallowance of experience-based, baccalaureate equivalencies. After researching the issue, however, INS found that "both the Act and its legislative history make clear that, in order to . . . have experience equating to an advanced degree under the second [preference category], *an alien must have at least a bachelor's degree*." Final Rule for Employment-Based Immigrant Visa Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added). The regulations therefore require an advanced degree professional to have at least a U.S. baccalaureate, or an equivalency that is not based on experience.

III. CONCLUSION

For the foregoing reason, the record on appeal does not establish the Beneficiary's possession of the minimum educational requirements for the requested classification or the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.