



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

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

MATTER OF A-R- INC.

DATE: MAR. 1, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of physical-, occupational-, and speech-therapy services, seeks to employ the Beneficiary as a speech language pathologist. 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. business to sponsor a foreign national for lawful permanent resident status to work in a job requiring at least a master's degree, or a baccalaureate followed by five years of experience.

The Acting Director of the Nebraska Service Center denied the petition and the Petitioner's following motions to reopen and reconsider. The Director concluded that the Petitioner did not demonstrate the Beneficiary's possession of the minimum educational qualifications of the requested classification and the offered position.

On appeal, the Petitioner asserts that the Director erred in rejecting an independent evaluation of the Beneficiary's foreign educational credentials and overlooked evidence that her master's degree followed a four-year, rather than three-year, bachelor's degree.

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

I. EMPLOYMENT-BASED IMMIGRATION

Unless seeking Schedule A designation or a waiver in the national interest, immigration as an advanced degree professional 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, 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 an offered 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

requirements of an offered 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. . EDUCATIONAL REQUIREMENTS OF THE REQUESTED CLASSIFICATION AND LABOR CERTIFICATION

As previously indicated, an advanced degree professional must have an “advanced degree.” Section 203(b)(2)(A) of the Act. The term 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).

A petitioner must also establish a beneficiary’s possession of all DOL-certified job requirements of an offered position by a petition’s priority date. *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977).¹ 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*, 956 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 speech language pathologist as: a U.S. master’s degree or a foreign equivalent degree in speech language pathology; one year of experience in the job offered; and valid, New York state licensure as a speech language pathologist. The labor certification specifies that the Petitioner will not accept an alternate combination of education and experience.

The Petitioner submitted an independent evaluation of the Beneficiary’s bachelor’s and master’s degrees from India. The evaluation concludes that the credentials equate, respectively, to a U.S. bachelor’s degree in communication sciences and disorders, and a U.S. master’s degree in speech language pathology. The Director, however, noted that university marks memoranda indicate that the Beneficiary studied only three years to obtain her bachelor’s degree. A U.S. bachelor’s degree generally requires four years of study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg’l Comm’r 1977). The Director also noted contrary information in the Electronic Database for Global Education (EDGE), an online resource that federal courts have found to be a reliable, peer-reviewed source of

¹ This petition’s priority date is January 18, 2017, 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).

educational equivalencies.² EDGE indicates that, when following three-year bachelor's degrees, two-year Indian master's degrees like the Beneficiary's equate to only U.S. bachelor's degrees. As such, the Director found that the Petitioner did not demonstrate the Beneficiary's possession of a master's degree in speech language pathology.

On appeal, the Petitioner argues that the Beneficiary's baccalaureate program constituted four years of university. The Petitioner documented that, after completion of three years of coursework and before the issuance of her degree, the Beneficiary completed a 10-month, two-semester, clinical internship. The documentation – including internship and clinical practicum certificates, a syllabus, and a written curriculum – indicate that the Beneficiary's bachelor's degree required her completion of the internship.

The evaluation submitted by the Petitioner, however, does not establish that the Beneficiary's undergraduate coursework and one-year internship equates to a four-year, U.S. bachelor's degree. U.S. baccalaureates typically require 120 credits. *Tisco Grp., Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 *4 (E.D. Mich. Aug. 30, 2010). The evaluation equates the Beneficiary's bachelor's degree - including the internship - to only 111 U.S. credits. The evaluation does not explain how the Beneficiary has the equivalent of a U.S. bachelor's degree based on less than 120 credits. See *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (stating that immigration officers may reject or afford lesser evidentiary weight to an expert opinion that conflicts with other evidence "or is in any way questionable").

Even if the Beneficiary obtained a four-year bachelor's degree, under the terms of the labor certification, the Petitioner must demonstrate that the Beneficiary has the equivalent of a U.S. master's degree. The Petitioner argues that the Beneficiary's master's degree differs from those discussed in EDGE because she had a four-year degree prior to graduate admission. But the Petitioner has not demonstrated that the Beneficiary's graduate program *required* a four-year bachelor's degree for entry.³ The Beneficiary's completion of a four-year bachelor's degree prior to admission to the graduate program, if such a degree was not required, would not elevate her graduate degree to the equivalent of a U.S. master's degree. Therefore, consistent with the EDGE information, we find that the Beneficiary's master's degree equates to a U.S. bachelor's degree.

The Petitioner also argues that additional evidence establishes the equivalence of the Beneficiary's graduate degree to the requisite U.S. master's degree in speech language pathology. The record shows that, by the petition's priority date, the Beneficiary obtained a New York license as a speech language pathologist and certification in the field from the American Speech-Language-Hearing

² EDGE was created by the American Association of Collegiate Registrars and Admission Officers (AACRAO), "a non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." AACRAO, "Who We Are," <https://www.aacrao.org/who-we-are> (last visited Feb. 13, 2019); see, e.g., *Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

³ Because the Beneficiary apparently entered her graduate program with less than the equivalent of 120 U.S. credits, the record indicates that admission to the master's program did not require at least a four-year degree.

Association (ASHA). Both credentials require a master's degree. *See* N.Y. Education Law § 8206; ASHA, "2014 Standards and Implementation Procedures for the Certificate of Clinical Competence in Speech-Language Pathology," <https://www.asha.org/certification/2014-speech-language-pathology-certification-standards/> (last visited Feb. 13, 2019). In addition, pursuant to U.S. immigration law, the Beneficiary received certification as a foreign healthcare worker, indicating that her education, training, license, and experience compare to those of U.S. speech language pathologists. *See* 8 C.F.R. § 212.15(f) (listing requirements for issuance of a health care certification).

Contrary to the job requirements of the offered position, however, the Beneficiary's license and certifications do not specify her possession of a single degree that is either a U.S. master's degree or its foreign equivalent. The record also does not indicate what credentials the Beneficiary submitted to obtain her license and certifications. In addition to her Indian degrees, the Beneficiary may have submitted evidence of her employment experience or her completion of coursework at other institutions. In an affidavit, the Beneficiary states that the license and certifications stem from evaluations of her Indian university credentials. But the record requires independent, objective documentation to support her statement.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of a master's degree in speech language pathology, the minimum educational requirement of the offered position. We will therefore affirm the petition's denial.

We will, however, withdraw the Director's determination that the Beneficiary lacks the required credentials for advanced degree classification. The record establishes that, by the petition's filing, the Beneficiary had at least the foreign equivalent of a U.S. bachelor's degree followed by five years of qualifying experience in the specialty. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility for a requested benefit "at the time of filing"). As noted, the record demonstrates that her Indian master's degree equates to at least a U.S. bachelor's degree. The Petitioner also documented that she gained at least five years of post-baccalaureate experience in speech language pathology. Therefore, contrary to the Director's decision, the Petitioner has demonstrated the Beneficiary's qualifications for the requested classification. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a bachelor's degree followed by at least five years of progressive experience in the specialty).

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage of the offered position. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of a petitioner's annual reports, federal tax returns, or audited financial statements. *Id.*

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Here, the labor certification states the proffered wage of the offered position of speech language pathologist as \$58,386 a year. As previously noted, the petition's priority date is January 18, 2017.

The Petitioner submitted a copy of its federal income tax return for 2016. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the Petitioner's ability to pay the proffered wage in 2017, the year of the petition's priority date, or thereafter.

Thus, in any future filings in this matter, the Petitioner must submit copies of annual reports, federal tax returns, or audited financial statements for 2017 and, if available, 2018. The Petitioner may also submit additional evidence of its ability to pay, including evidence of payments it made to the Beneficiary in those years, or materials supporting the factors stated in *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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 A-R- Inc.*, ID# 2607453 (AAO Mar. 1, 2019)