



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

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

MATTER OF R- LLC

DATE: MAY 9, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a pharmaceutical R&D company, seeks to employ the Beneficiary as a quality control chemist. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” 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 on the ground that the Beneficiary did not meet the minimum educational requirement of the labor certification – specifically, a master’s degree in chemistry or analytical chemistry or a foreign educational equivalent – and therefore did not qualify for the proffered position. The Petitioner filed an appeal, which we dismissed, finding that the Beneficiary did not have the requisite degree to meet the minimum educational requirement of the labor certification. We also found that the Petitioner did not establish its ability to pay the proffered wage of the job offered because it had not submitted any of the required documentation identified in the regulation at 8 C.F.R. § 204.5(g)(2).

The matter is now before us on a motion to reopen and a motion to reconsider. Based on newly submitted evidence we will grant the motion to reopen, in part, to withdraw our previous finding that the Petitioner did not establish its ability to pay the proffered wage. However, we will deny the motion to reopen in part, deny the motion to reconsider, and affirm our finding that the Beneficiary does not have the requisite educational degree to meet the terms of the labor certification and qualify for the proffered position.

## I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

A petition filed for advanced degree professional classification must be accompanied by evidence showing that the beneficiary has either a U.S. advanced degree or a foreign equivalent degree, or a U.S. baccalaureate degree or a foreign equivalent degree plus at least five years of progressive post-baccalaureate experience in the specialty. *See* 8 C.F.R. § 204.5(k)(3)(i). A beneficiary must also meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date.<sup>1</sup> *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 150 (Acting Reg'l Comm'r 1977). In this case the labor certification specifies that the minimum requirements for the proffered position are a master's degree in chemistry or analytical chemistry, or a foreign educational equivalent, and one year of experience in the job offered. The labor certification does not allow for an alternate combination of education and experience, such as a baccalaureate degree and five years of qualifying experience.

The record shows that the Beneficiary has two degrees from Indian universities, including a three-year bachelor of science awarded by [redacted] University in 2001 and a two-year master of science in chemistry awarded by [redacted] University in 2004. The record also includes three evaluations of the Beneficiary's credentials from credential evaluation services, all of which concluded that the Beneficiary's two degrees were, in combination, equivalent to a U.S. bachelor's degree in chemistry. The evaluations also concluded that the Beneficiary's academic degrees in combination with his subsequent work experience in the field of chemistry was equivalent to a U.S. master's degree in chemistry. In our decision dismissing the appeal we cited these evaluations and found that the Petitioner did establish the Beneficiary's possession of a master's degree, as required by the terms of the labor certification.

### A. Motion to Reopen

In regard to the motion to reopen the issue of the Beneficiary's qualifications, the Petitioner has not stated any new facts nor submitted any new evidence concerning the Beneficiary's educational qualifications. The only education-related documents submitted in support of the motion are the credential evaluations and associated materials from [redacted] and [redacted] which were originally submitted in response to the Director's request for evidence. These evaluations were already considered and discussed in the Director's decision denying the petition and in our initial decision dismissing the appeal. Thus, the Petitioner has presented no grounds for reopening this proceeding to overturn our decision on the Beneficiary's qualifications. We will therefore deny the motion to reopen, in part.

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<sup>1</sup> The "priority date" of a petition is the date the underlying labor certification is filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d). In this case the priority date is May 25, 2017.

B. Motion to Reconsider

The Petitioner reiterates its contention, considered and rejected in our decision dismissing the appeal, that the Beneficiary's education in India was equivalent to a U.S. master's degree in chemistry based on six years of postgraduate study including a three-year bachelor's degree, a one-year postgraduate diploma, and a two-year master's degree in chemistry. While USCIS may consider such educational credentials equivalent to a U.S. masters' degree in certain circumstances, depending on the nature of the academic institutions, the quality of the coursework, and the field(s) of study of the respective credentials, the record does not indicate that the Beneficiary has these credentials. Specifically, there is no evidence that the Beneficiary has a one-year postgraduate diploma. As far as the record shows, the Beneficiary has just five years of postgraduate study in India – a three-year bachelor's degree from [redacted] University and a two-year master of science in chemistry from [redacted] University. All three of the evaluations submitted by the Petitioner agree that this education is equivalent to a U.S. bachelor's degree in chemistry, not a U.S. master's degree.

The Petitioner also refers to the federal district court decision in *Chintakuntla, et al. v. USINS*, No. C 99-5211 MMC (May 4, 2000), cited in the [redacted] evaluations, which recognized that a U.S. or foreign equivalent bachelor's degree plus five years of qualifying experience is considered equivalent to a U.S. master's degree for the purposes of classification as an advanced degree professional. Nothing in this decision, however, purports to modify the explicit job requirements of a labor certification, which in this case specify that the minimum educational requirement for the proffered position of quality control chemist is a U.S. master's degree in chemistry or a foreign educational equivalent. Thus, the Petitioner has not shown that our previous decision was based on an incorrect application of law or policy and that it was incorrect based on the evidence in the record at the time of the decision. Accordingly, we will deny the motion to reconsider.

III. CONCLUSION

On motion, the Petitioner demonstrated its ability to pay, so we will grant the motion to reopen, in part. However, the Petitioner did not submit new fact supported by documentary evidence to overcome the prior finding that the Beneficiary does not have the required education for the offered position, so the motion to reopen will also be denied in part. Additionally, as the Petitioner has not shown that the prior decision was based on an incorrect application of law or policy nor established eligibility for the benefit sought, the motion to reconsider will be denied. 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 motion to reopen is granted, in part and denied, in part.

**FURTHER ORDER:** The motion to reconsider is denied.