



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

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

In Re: 09230840

DATE: MAY 17, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a state university, seeks to employ the Beneficiary as an assistant professor. It requests advanced degree professional classification for the Beneficiary 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 grounds that the Petitioner did not establish that the Beneficiary had the requisite experience to qualify for the proffered position and advanced degree professional classification under the terms of the labor certification.

On appeal the Petitioner submits a brief and additional documentation, asserting that the evidence of record establishes that the Beneficiary has the requisite experience to qualify for the job offered and the requested visa classification under the terms of the labor certification.

Upon *de novo* review, we will withdraw the Director’s decision and remand the case for further consideration and the issuance of a new decision.

**I. LAW**

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). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). 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 may 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. ANALYSIS

To qualify for classification as an advanced degree professional the Beneficiary must have a U.S. degree or a foreign equivalent degree above that of baccalaureate, as defined in 8 C.F.R. § 204.5(k)(2). The Beneficiary must also meet the specific educational, training, experience, and other requirements of the proffered position as stated on the labor certification. *See* 8 C.F.R. § 204.5(k)(4)(i). All requirements must be met by the priority date of the petition,<sup>1</sup> which in this case is August 1, 2018. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'1 Comm'r 1977).

In this case section H of the labor certification (Job Opportunity Information) specifies the following with respect to the requirements for the job of assistant professor:

4.	Education: Minimum level required:	Doctorate
4-B.	Major field of study	Applied Mathematics
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	No
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	12 months
10-B.	Acceptable alternative occupation:	Experience in financial company(s)

Thus, the labor certification requires a U.S. doctoral degree in applied mathematics, or a foreign educational equivalent, and 12 months of experience in a financial company (or companies).

With its initial evidence the Petitioner submitted copies of the Beneficiary's degree certificate and academic record from the University of [redacted] which show that she was granted a doctor of philosophy in applied mathematics in June 2017 upon completion of a five-year academic program. Thus, the Beneficiary meets the minimum educational requirement for the job under the terms of the labor certification.

As evidence of the Beneficiary's qualifying experience the Petitioner submitted documentation with the petition and in response to the Director's request for evidence (RFE), which indicated that the Beneficiary had internships with three French companies – [redacted], [redacted] and [redacted] – for a total of 15½ months during the years 2010-2012.<sup>2</sup> The documentation included English-language letters from officials in each company (submitted in response to the RFE) stating that the Beneficiary worked full-time, confirming her dates of service, and describing her duties and projects. In his decision, however, the Director declined to consider any evidence of the Beneficiary's work experience with

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<sup>1</sup> The priority date of an employment-based immigrant petition is the date the underlying labor certification (ETA Form 9089) was filed with the DOL. *See* 8 C.F.R. § 204.5(d).

<sup>2</sup> The internships ran from September 6, 2010, to March 4, 2011, with [redacted] from March 15, 2011, to August 15, 2011, with [redacted]; and from April 16, 2012, to August 31, 2012, with [redacted]

the three French companies, stating that none of this experience was listed on the labor certification,<sup>3</sup> that a petitioner had to establish its eligibility for the requested benefit at the time the petition was filed, and that a petitioner could not make a material change to a deficient petition to make it conform to USCIS requirements, citing *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The Director concluded that the Beneficiary was not eligible for classification as an advanced degree professional because the Petitioner did not establish that she met the experience requirement of the labor certification.

On appeal the Petitioner asserts that the Director was wrong not to consider the evidence it submitted of the Beneficiary's work experience with [redacted] [redacted] and [redacted] even if those jobs were not listed on the labor certification. The Petitioner discusses *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), which held that the failure to list experience on a labor certification may lessen the credibility of the claimed experience, but does not preclude USCIS from considering documentary evidence of such experience in its adjudication of an I-140 petition. Supplementing its previously submitted documentation, the Petitioner submits additional evidence of the Beneficiary's experience with the three French companies including, in particular, copies of her monthly pay statements (in French with certified English translations) from each company. Based on the entire record we conclude that the Petitioner has established, by a preponderance of the evidence, that the Beneficiary had a total of 15½ months of experience with the three French companies, which exceeded the 12-month minimum requirement of the labor certification.

It is unclear from the record, however, whether all of this experience was with financial companies, as required by section H.10 of the labor certification. The evidence of record does not show that [redacted] [redacted] and [redacted] are all "financial companies," which they would have to be for the Beneficiary to meet the labor certification's minimum experience requirement since no two internships added up to 12 months of experience.

Therefore, we will remand this case to the Director for further consideration of whether the Beneficiary's internships with the three French companies constitute qualifying experience with financial companies.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>3</sup> Section K of the labor certification (Alien Work Experience) calls for the listing of all jobs held during the past three years, as well as any other experience that qualifies the beneficiary for the job offered. In this case the only jobs listed on the labor certification are (1) assistant professor with the Petitioner starting in August 2017, and (2) research/teaching assistant at the University of [redacted] from September 2012 to June 2017, both of which were held by the Beneficiary during three-year period preceding the filing of the labor certification. Employment verification letters from each of these institutions were submitted with the petition. However, neither of these jobs represents qualifying experience under the terms of the labor certification.