



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

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

In Re: 12510852

Date: MAY 19, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a Christian elementary school teacher under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. 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, concluding that the Petitioner did not establish that the Beneficiary met the minimum requirements for the offered position and for classification as an advanced degree professional. The Director granted a subsequent motion to reconsider and affirmed the denial on the same grounds.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application 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 considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the 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.

For the requested second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents, the term “advanced degree” is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

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.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

II. THE REQUIREMENTS OF THE OFFERED POSITION

The petition is accompanied by a labor certification) with a priority date of October 30, 2018.¹ Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master’s degree in education.
- H.5. Training: None required.
- H.6. Experience in the job offered: None.
- H.7. Alternate field of study: Religious education in Christian education or related.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None.
- H.14. Specific skills or other requirements: [Blank]

Part J of the labor certification states that the Beneficiary possesses a master of religious education in Christian education from [redacted] College in [redacted] California, completed in 2018. The record contains a copy of the beneficiary’s degree and transcript from [redacted] College [redacted]. The degree is dated May 8, 2019, and the transcripts list a graduation date of May 8, 2019.

III. THE BENEFICIARY’S QUALIFICATIONS

A petitioner must establish a beneficiary’s possession of all the education, training, and experience specified on an accompanying labor certification by a petition’s priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

¹ The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

In the instant case, the Petitioner requests the Beneficiary's classification as an advanced degree professional in the offered position of Christian elementary school teacher based on the Beneficiary's possession of a master's degree issued by [redacted] on May 8, 2019, more than six months after the priority date.

In a notice of intent to deny (NOID) the petition, the Director informed the Petitioner that the record was insufficient to establish the Beneficiary's qualifications for the offered position as of the October 30, 2018 priority date because the degree was not conferred until May 8, 2019.

In response to the NOID, the Petitioner explained that the Beneficiary completed the requirements for the master's degree on August 25, 2018. However, because [redacted] only holds commencement annually in May, the Beneficiary missed the deadline and did not attend the graduation ceremony until 2019. The Petitioner submitted a Certificate of Graduation from [redacted] indicating a "Date Completed" of August 25, 2018, as well as a letter from the [redacted] registrar explaining the two dates, and newly issued transcripts from [redacted] listing the Beneficiary's master's program and status as "Graduate," with a graduation date of May 8, 2019. The transcripts also list the Beneficiary's credential as "Master of Religious Education," with the "Date Awarded" as May 8, 2019 and the "Date Cleared" as August 25, 2018.

The Director denied the petition, concluding that the record was still insufficient to establish the Beneficiary's eligibility for the offered position and for the advanced degree classification. The Director found that the newly issued transcripts submitted with the NOID response included annotations of the dates awarded and dates cleared that were not shown on the initial transcripts submitted with the petition. The Director also found that [redacted] was not an accredited postsecondary institution until April 16, 2019, and that even if the Beneficiary were considered to have been awarded the master's degree on August 25, 2018, it would not have been awarded by an accredited college or university.

The Director subsequently granted a motion to reconsider the decision and affirmed the denial. In the affirming the denial, the Director relied on *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017) and found that the record did not include a "provisional certificate" to demonstrate that the Beneficiary earned her degree on August 25, 2018.² The Director also concluded that "had the Petitioner provided a provisional certificate to substantiate its claim that the Beneficiary earned her degree on August 25, 2018, such a degree would not have been considered, as [redacted] was not accredited at that time."

On appeal, the Petitioner asserts that the policy of *Matter of O-A-, Inc.* applies in this case, but that the Director erred in specifically requiring a "provisional certificate" because the degree in question is a U.S. degree. The Petitioner also asserts that USCIS erroneously requires the issuance of U.S. advanced degrees by accredited schools. The Petitioner states the preaccreditation status of [redacted] "is an

² *Matter of O-A-, Inc.* held that an "official academic record" is not limited to a diploma. 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. *Id.* at 4.

ensuring fact that the Beneficiary’s degree-awarding college is an institution with proper academic qualities that do not and should not have any negative decisive effect on the Beneficiary’s academic qualification for her immigrant petition.”

A. The Degree Conferral Date

The statute and regulations governing the advanced degree professional classification use the terms “degree” and “official academic record,” not “diploma.” 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). Therefore, an “official academic record” is not limited to a diploma.³ Accordingly, we must conduct a case-specific analysis to determine whether a 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. 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.

Upon review of the entire record, including the [redacted] issued Certificate of Graduation, academic transcripts, and a letter from the [redacted] registrar verifying the annual commencement schedule and the two transcript dates, we conclude that the Petitioner has established that the Beneficiary completed all substantive requirements for the degree of master of religious education, and the degree was approved by [redacted] on August 25, 2018.⁴ We will therefore withdraw this portion of the Director’s decision.

B. Accreditation of the Issuing College

The record indicates that, at the time the Beneficiary completed the requirements for the master of religious education degree, [redacted] was not fully accredited. As noted by the Director in her decision, [redacted] was preaccredited from October 27, 2015 to April 15, 2019, but did not receive full

³ *See Id.*

⁴ We have also consulted Electronic Database for Global Education (EDGE), the “web-based resource for the evaluation of foreign educational credentials,” created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries.” *See* <http://www.aacrao.org/who-we-are>; *see also* <http://edge.aacrao.org/info.php>. EDGE includes the following notes regarding official transcripts in lieu of official diplomas in the United States:

In the United States, it is common for graduates attending commencement ceremonies to receive a rolled-up blank sheet of paper wrapped in a ribbon. The official diploma is mailed months later. But, in the interim, students can obtain an official transcript with a “degree statement” or “statement of degree” certifying that they have indeed completed all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate.

accreditation until April 16, 2019, more than six months after the Beneficiary completed the degree requirements.

While the regulatory language of 8 C.F.R. § 204.5(k)(2) does not specifically state that a degree must come from an accredited college or university to qualify as an “advanced degree,” the requirement is implicit in the regulation. The Act is a federal statute with nationwide application. The regulations implementing the Act, including 8 C.F.R. § 204.5(k)(2) defining “advanced degree” for the purposes of section 203(b)(2) of the Act, as well as 8 C.F.R. § 204.5(l)(2) defining “professional” for the purposes of section 203(b)(3) of the Act, also have nationwide application. The only way to assure nationwide recognition for its degrees is for an educational institution to secure accreditation by a regional accrediting agency⁵ approved by the U.S. Department of Education (DOE) and Council for Higher Education Accreditation (CHEA). *See Yau v. INS*, 13 I&N Dec. 75 (Reg’l Comm’r 1968) (a degree issued by an unaccredited institution does not qualify as a professional within the statute granting preference classification.).

Accreditation is the process of conducting nongovernmental, peer evaluation of educational institutions and programs to ensure that educational institutions or programs are operating at basic levels of quality and provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees. *See DOE, Accreditation in the United States*, <http://www2.ed.gov/print/admins/finaid/accred/accreditation.html>. The DOE is required by law to publish a list of nationally recognized accrediting agencies that are reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit. The DOE’s purpose in ascertaining the accreditation status of U.S. colleges and universities is to determine their eligibility for federal funding and student aid, and participation in other federal programs. *Id.*

The CHEA is an association of 3,000 degree-granting colleges and universities that accredits higher education institutions as a key strategy to assure quality, accountability, and improvement in higher education. *See CHEA, Recognition of Accrediting Organizations Policy and Procedures*, <https://www.chea.org/chea-recognition-policy-and-procedures>. According to CHEA, accrediting institutions of higher education “involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort.” *Id.* The CHEA also recognizes accrediting organizations.

The DOE and CHEA recognize Transnational Association of Christian Colleges and Schools Accreditation Commission (TRACS) as the accrediting association with jurisdiction over faith-related Christian postsecondary institutions in the United States.⁶ As previously noted, TRACS granted candidacy to [redacted] on October 27, 2015, and granted full accreditation [redacted] on April 16, 2019.⁷

⁵ Accrediting agencies are private educational associations that develop evaluation criteria reflecting the qualities of a sound educational program, and conduct evaluations to assess whether institutions meet those criteria. Institutions that meet an accrediting agency’s criteria are then “accredited” by that agency.

⁶ *See* CHEA Directories, at <https://www.chea.org/transnational-association-christian-colleges-and-schools-accreditation-commission>.

⁷ *See* Database of Accredited Postsecondary Institutions and Programs, at <https://ope.ed.gov/dapip/#/institution-profile/238573>.

The Beneficiary completed the requirements for her degree on August 25, 2018, more than six months prior to [redacted]'s full accreditation.

According to TRACS's website, institutions seeking candidacy (preaccreditation) "must provide evidence of sound planning, have adequate resources to implement these plans, and have the ability to achieve Accredited status. This status does not guarantee the institution will become accredited."⁸ The record does not demonstrate that [redacted]'s academic standards were sufficient for accreditation by the recognized accrediting agency at any time prior to its accreditation by TRACS in April 2019.

Therefore, since the beneficiary's degree from [redacted] was not issued by a fully accredited institution of higher education, it does not qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

The Petitioner urges us to adopt the DOE's definition of an "institution of higher education." *See* 20 U.S.C. § 1001(a). Under that definition, an institution of higher education may include an unaccredited school if a recognized accreditation agency granted it "preaccreditation status" and the DOE "determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time." 20 U.S.C. § 1001(a)(5). The record indicates that [redacted] received preaccreditation status (candidacy) from TRACS on October 27, 2015, three years before the Beneficiary completed the requirements for her degree.

The DOE's definition of an institution of higher education is part of the Higher Education Act of 1965, Pub. L. No. 89-329 (HEA). HEA's definition of an institution of higher education is for the purpose of providing financial assistance for students in postsecondary and higher education and does not relate to the accreditation requirements of the DOE and CHEA discussed above. *See* Higher Ed. Act of 1965, Pub.L. 89-329. Status under the HEA as an institution of higher education has no bearing on whether a degree issued by [redacted] meets the requirements of section 203(b)(2) of the Act.

The Petitioner asserts that we erroneously require the issuance of U.S. advanced degrees by accredited schools, and that we "cannot use a mere implication or conjecture as an adequate ground for the denial ... when there is no relevant USCIS regulation about this matter ..." However, unless plainly erroneous or inconsistent with the regulation, an agency's interpretation controls. *See Decker v. Nw. Envtl. Def. Ctr.*, -- U.S. --, 133 S.Ct. 1326, 1337 (2013). In the instant case, our interpretation requiring the issuance of U.S. advanced degrees by accredited schools is neither plainly erroneous nor inconsistent with the regulations. We therefore reject the Petitioner's assertion that we have erroneously interpreted the regulations.

⁸ TRACS, at <https://tracs.org/Documents/12018AMRevisedSteps.pdf> (last visited Dec. 4, 2020).

IV. CONCLUSION

For the reasons explained above, the Petitioner has not established that the Beneficiary possesses a master's degree from an accredited institution. The record does not establish the Beneficiary's possession of the educational requirements for the requested classification. We will therefore affirm the Director's decision and dismiss the appeal.

ORDER: The appeal is dismissed.