



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

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

In Re: 13593655

Date: NOV. 3, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a software development and consulting business, seeks to employ the Beneficiary as a systems analyst. It requests classification of the Beneficiary as an advanced degree professional 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 multiple grounds. The Director determined that (1) the job offer does not require an advanced degree or a bachelor’s degree and five years of experience, and therefore does not qualify for advanced degree professional classification; (2) the Beneficiary did not meet the minimum experience requirement of the labor certification by the petition’s priority date; (3) the Petitioner failed to show that a *bona fide* job offer exists; and (4) the Petitioner and the Beneficiary willfully misrepresented material facts concerning the Beneficiary’s employment experience on the labor certification. Based on this willful misrepresentation finding the Director also invalidated the labor certification. A petition that lacks a requisite labor certification cannot be approved.

On appeal the Petitioner submits a brief and additional documentation, asserts that the evidence of record refutes the Director’s findings, and requests that the decision be overturned.

The 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). It is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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

I. LAW

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 regulation at 8 C.F.R. § 204.5(k)(3)(i) states 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.

In addition, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition's priority date.¹ *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

The labor certification in this case is ambiguous with regard to the minimum educational and experience requirements for the proffered position of systems analyst. Sections H.4, H.8, and H.10 indicate that a bachelor's degree (in computer science, software engineering, information technology, or a related field) and two years of experience (in any suitable software development occupation), or alternatively a master's degree and two years of experience, is acceptable. Section H.14 states that a bachelor's degree and five years of experience, or alternatively a master's degree and two years of experience, is acceptable, including at least two years of experience with specific software development tools identified in section H.14. To resolve the ambiguity regarding the number of years of post-baccalaureate experience is required to qualify for the job, it is appropriate to examine other documentation, in particular the Petitioner's recruitment materials, to ascertain the Petitioner's actual intent with respect to the minimum requirements for the job.

The Petitioner asserts that there was a drafting error in section H.10-A of the labor certification, where "24" rather than "60" months was entered as the amount of experience required after a bachelor's degree. The Petitioner claims that its intent to require 60 months of post-baccalaureate experience was reflected in its recruitment for the proffered position. On appeal the Petitioner submits a copy of its PERM Audit Report with all of its recruitment documentation including newspaper advertisements, internet job search postings, and employer website postings for the systems analyst position. Without exception the recruitment materials state that the minimum requirements for the job are a bachelor's degree and five years of experience or a master's degree and two years of experience, including two years of experience with the software development tools identified in section H.14. These requirements are consistent with the minimum requirements stated in section H.14 of the labor

¹ The priority date of an employment-based immigrant petition is the date the underlying labor certification was filed with the DOL. 8 C.F.R. § 204.5(d). In this case the priority date is March 5, 2019.

certification, which accord with the requirements for classification of the proffered position as an advanced degree professional. We conclude, therefore, that the proffered position qualifies for advanced degree professional classification under the terms of the labor certification. The Director's contrary finding will be withdrawn.

The record establishes that the Beneficiary earned a four-year bachelor of engineering degree in computer science and engineering from the University [redacted] India, in 2002, which is the foreign educational equivalent of a bachelor's degree from a U.S. college or university. Since the Beneficiary meets the labor certification's primary educational requirement set in section H.4, he must have at least five years of progressive post-baccalaureate experience in "any suitable software development occupation" as stated in section H.10, including at least two years of experience with the software development tools identified in section H.14, by the priority date of March 5, 2019, to qualify for advanced degree professional classification. Notwithstanding certain discrepancies in the record, we determine that the Petitioner has established, by a preponderance of the evidence, that the Beneficiary gained more than five years of qualifying experience, including the requisite two years of experience with specified software development tools, by the priority date of March 5, 2019. Accordingly, we will withdraw the Director's finding that the Beneficiary did not meet the experience requirement(s) of the labor certification. Based on his combination of a bachelor's degree and five years of qualifying post-baccalaureate experience, we conclude that the Beneficiary meets the requirements for advanced degree professional classification.

We also determine that the Petitioner has established, by a preponderance of the evidence, that it intends to employ the Beneficiary in the proffered position and that neither the Petitioner nor the Beneficiary willfully misrepresented the Beneficiary's employment experience in the current labor certification. Accordingly, we will withdraw the Director's invalidation of the labor certification and reinstate the document's validity.

III. CONCLUSION

In accord with the foregoing analysis, we withdraw the Director's decision to deny the petition.

ORDER: The appeal is sustained.