



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 22146834

Date: JUL. 28, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a manufacturers' representative company, seeks to employ the Beneficiary as a sales engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that because the position requires only a bachelor's degree without any experience, the minimum requirements of the position do not qualify as an advanced degree. On appeal, the Petitioner argues that the Director failed to consider evidence of the Beneficiary's experience and did not properly read the certified ETA Form 9089 (labor certification).

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. LEGAL FRAMEWORK

Immigration as an advanced degree professional usually follows a three-step process. First, the prospective employer must obtain a labor certification approval from the U.S. Department of Labor (DOL) to establish that there are not sufficient U.S. workers who are available for the offered position. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, the employer must submit the approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. The immigrant visa petition must establish that the foreign worker qualifies for the offered position, that the foreign worker and the offered position are eligible for the requested immigrant classification, and that the employer has the ability to pay the proffered wage. See 8 C.F.R. § 204.5. These requirements

must be satisfied by the priority date of the immigrant visa petition. See 8 C.F.R. § 204.5(g)(2), *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977). For petitions that require a labor certification, the priority date is the date on which the DOL accepted the labor certification application for processing. See 8 C.F.R. § 204.5(d).

Finally, if USCIS approves the immigrant visa petition, the foreign worker may apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. Section 245 of the Act, 8 U.S.C. § 1255.

II. THE POSITION'S NEED FOR AN ADVANCED DEGREE PROFESSIONAL

A labor certification has separate sections for petitioners to complete including, but not limited to, a section devoted to the requirements of the position in general ("Job Opportunity Information") and a section devoted to the specific noncitizen beneficiary's education, training, and experience ("Alien Information").

In the portion of the labor certification devoted to the position's requirements, the Petitioner stated in block H.4 that the minimum requirements of the offered position of sales engineer is a bachelor's degree in electrical engineering. The Petitioner also indicated in the labor certification in block H.6 that the sales engineer position requires no experience. Furthermore, in section H.8, the Petitioner indicated that an alternate combination of education and experience is not acceptable for the sales engineer position.

In the portion of the labor certification pertaining to the specific noncitizen Beneficiary, the Petitioner indicated that the question in block J.18 was not applicable to the Beneficiary. The question reads, "[d]oes the [noncitizen] have the experience as required for the requested job opportunity indicated in question H.6?" Because the Petitioner indicated in H.6 that the position of sales engineer requires no experience, the inapplicability of the question in J.18 makes sense.

On the I-140 petition, the Petitioner checked a box in Section 2 concerning the type of petition it was filing. Here, the Petitioner selected 1.d. indicating a petition for a "member of the professions holding an advanced degree or an alien of exceptional ability. . . . (emphasis added)."¹ For employment-based immigrant visa petitions requesting advanced degree professional classification, the job offer portion of the labor certification must require a professional holding an advanced degree. See 8 C.F.R. § 204.5(k)(4)(i). An "advanced degree" is defined as an academic or professional degree above a bachelor's degree; or a bachelor's degree followed by at least five years of progressive experience. 8 C.F.R. § 204.5(k)(2). Therefore, for classification as an advanced degree professional, the accompanying labor certification must require an academic or professional degree above a baccalaureate, or a baccalaureate degree followed by at least five years of progressive experience.

On the labor certification, the Petitioner listed the minimum requirements of the offered position as a bachelor's degree with no experience required.² Therefore, the Director correctly denied the petition.

¹ As the Director noted in the decision, the Petitioner has not asserted that the Beneficiary has exceptional ability. Therefore, we limit our discussion to members of the professions holding an advanced degree.

² On appeal, the Petitioner analyzes section H of the labor certification as if it pertained to the Beneficiary specifically, rather than the sales engineer position generally.

Based on the job requirements listed on the labor certification application, the offered position does not require an advanced degree. As the minimum requirements of the position require only a bachelor's degree without any experience, the requirements of the position are inconsistent with the definition of "advanced degree" at 8 C.F.R. § 204.5(k)(2). USCIS may neither ignore a certification term nor impose additional requirements. See, e.g., *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the content of the labor certification") (emphasis in original).

The offered position requires less than an advanced degree to perform because it only requires a bachelor's degree as a minimum. As the Director explained, the position's job requirements do not support the requested immigrant visa classification. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). This includes requests to change the classification requested on the I-140.

While the Petitioner's argues on appeal that the Director failed to consider that the Beneficiary's experience meets or exceeds five years, we need not reach the issue of the Beneficiary's qualifications.³ Even if the Beneficiary's qualifications met or exceeded the advanced degree definition, the petition still could not be approved because the Petitioner indicated that the position does not require an advanced degree.

III. THE VALIDITY OF THE LABOR CERTIFICATION

Although unaddressed by the Director, we note that the underlying labor certification is not signed by the Beneficiary. Therefore, this petition was not eligible for approval at filing because it was not accompanied by a valid labor certification. The regulation at 20 C.F.R. § 656.17 describing the basic labor certification process provides in pertinent part:

(a) Filing applications.

- (1) . . . Applications filed and certified electronically must, upon receipt of the labor certification, be signed immediately by the employer in order to be valid. Applications submitted by mail must contain the original signature of the employer, alien, attorney, and/or agent when they are received by the application processing center. DHS will not process petitions unless they are supported by an original certified ETA Form 9089 that has been signed by the employer, alien, attorney and/or agent.

Although an ETA 9089 approved by DOL accompanied the petition, it was not signed by the Beneficiary.⁴ Because the petition was not accompanied by a properly signed labor certification, the appeal is also dismissed on this basis.

IV. CONCLUSION

³ We make no finding concerning the Beneficiary's qualifications.

⁴ In addition, the labor certification provided does not appear to be the "original" as required by 20 C.F.R. § 656.17.

The minimum requirements of the position do not qualify as an advanced degree. Accordingly, the position's job requirements do not support the requested immigrant visa classification. In addition, the Petitioner has not established that the labor certification is valid and properly executed. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.