



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

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

In Re: 25609703

Date: MAR. 02, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree)

The Petitioner, an education center, seeks to employ the Beneficiary as an education administrator. 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 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 the record did not establish that the Beneficiary met the minimum requirements for the offered position as stated on the labor certification. Specifically, the Director concluded that the Beneficiary's degree is not from an accredited institution and therefore does not qualify as a United States academic or professional degree or a foreign equivalent degree. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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. LAW

Immigration as an advanced degree professional (EB-2 immigrant classification) generally follows a three-step process. First, a prospective employer must obtain U.S. Department of Labor (DOL) certification that: 1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and 2) permanent employment of a noncitizen in the job would not harm wages and working conditions of U.S. workers with similar positions. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(A), (C).

Finally, if USCIS approves a petition, a beneficiary 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor’s degree. A United States bachelor’s degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master’s degree. 8 C.F.R. § 204.5(k)(2).

II. ANALYSIS

The Petitioner indicated on its ETA Form 9089, Application for Permanent Employment Certification, that the position of education administrator requires a master’s degree in business administration, with no alternate field of study or combination of education and experience being acceptable. The record shows that the Beneficiary earned a Master of Business Administration degree in September 2017 from [redacted] University [redacted]. However, the Director noted that according to an online database maintained by the U.S. Department of Education (DOE), [redacted] was not accredited at the time the Beneficiary received her degree, and therefore the degree did not qualify as a United States academic or professional degree. While acknowledging that there is no specific requirement in the EB-2 regulations that a degree be issued by an accredited college or university, the Director noted that this requirement is implicit in the regulations’ consistent use of the modifier “United States” to describe both baccalaureate and advanced degrees, thereby making clear that such degrees must be recognized and honored on a nationwide basis. We agree.

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(1)(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 agency approved by the 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 allow the degree holder to qualify as a professional within the statute granting preference classification.).

On appeal, the Petitioner first asserts that because the regulations for the first preference employment-based immigration classification for outstanding professors and researchers (EB-1) requires evidence of academic degrees from accredited institutions, the lack of this specific requirement in the regulations pertaining to the requested EB-2 classification means that qualifying degrees need not be issued by an accredited institution. 8 C.F.R. §§ 204.5(i)(2), (k)(2). However, this argument is based upon a misunderstanding of the regulations for the EB-1 classification, which do not require the submission of evidence of a beneficiary’s degree. Rather, those regulations define the term “academic field” as “a body of specialized knowledge offered for study at an accredited United States university or institution of higher education.” The Petitioner has not established that the use of “accredited” at

8 C.F.R. § 204.5(i)(2) within the context of this definition has any relation to or impact on the evidentiary requirement in the EB-2 regulations.

The second argument posed by the Petitioner is that we should accept [redacted] approval by the California Bureau for Private Postsecondary Education (BPPE), which the Petitioner inaccurately describes as “the state agency governing higher education in California.”¹ It argues that the U.S. Department of Education does not require accreditation to operate a university, only state approval, and that [redacted] has been authorized by BPPE to issue degrees since 1994. However, the Petitioner has not shown that approval by the BPPE confers the same sort of nationwide recognition to degrees issued by an institution as does accreditation by a regional accrediting agency approved by the DOE and CHEA.

Finally, the Petitioner argues that at the time of appeal, [redacted] business school was in the last stage of the accreditation process with the Accrediting Commission of Career Schools and Colleges (ACCSC). But the Beneficiary received her degree in 2017, and the Petitioner does not assert that [redacted] accreditation at some future date would confer recognition of her degree by colleges and universities on a nationwide level. In addition, a petitioner must establish eligibility for a requested immigration benefit at the time of filing. 8 C.F.R. § 103.2(b)(1).

As the Beneficiary’s degree was not issued by an accredited college or university in the United States, and she does not hold a foreign degree which is equivalent to such a degree, she does not meet the minimum requirements of the offered position as stated on the labor certification, nor does she qualify as a member of the professions holding an advanced degree. For the reasons stated above, the petition will remain denied.

ORDER: The appeal is dismissed.

¹ The information from BPPE’s website included with the appeal states that it is responsible for oversight only of *private* postsecondary education in California.