



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

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

In Re: 32430867

Date: SEP. 09, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information technology solutions provider, seeks to employ the Beneficiary as an “architect- customer success.” It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. See 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 the record did not establish that the Beneficiary possessed a baccalaureate degree or its foreign equivalent as required to be eligible as a member of the professions holding an advanced degree. The matter is now before us on appeal pursuant to 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 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 demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and 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 visa category, 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. 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.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). An “advanced degree” is defined as:

[A]ny 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

8 C.F.R. § 204.5(k)(2). An advanced degree professional petition must be accompanied by:

- (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.

8 C.F.R. § 204.5(k)(3)(i). In addition, 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).

In short, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. This means that the beneficiary must possess, and the offered position must require, either a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate; or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

II. ANALYSIS

The Petitioner’s labor certification stated that the minimum requirements for the offered position of “architect- customer success” were a U.S. bachelor’s degree or a foreign equivalent degree in “computer science, computer engineering,” or a “related” field, plus five years of experience “in a related field.” Further, part H.7. of the labor certification indicated that no alternate combination of education and experience would be acceptable for the offered position.

On the labor certification, the Beneficiary attested that, by the petition's priority date, he received a bachelor's degree in computer engineering from an educational institution D-V- University based in India. The Petitioner submitted a diploma from D-V- University reflecting that the Beneficiary completed a "degree course" in computer engineering in 2003. The Petitioner also provided an expert evaluation of the Beneficiary's educational credentials from a senior professor in the [] [] Computer Science Department stating that, upon review, the Beneficiary's coursework was "equivalent to one year of undergraduate coursework from a university in the United States." In addition, the senior professor from [] further opined that the Beneficiary's twelve years of progressive work experience in the field "is equivalent to no less than four years of academic coursework in the field of Computer Information Systems" or "the equivalent of a US Bachelor of Science degree in Computer Information Systems from an accredited institution of higher learning in the United States."

The Director later issued a request for evidence (RFE) pointing to the Electronic Database for Global Education (EDGE)¹, created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).² The Director stated EDGE reflected that a diploma in engineering from an Indian educational institution was equivalent to one year of undergraduate study in the United States, consistent with the expert evaluation provided by the Petitioner. Therefore, the Director indicated that the submitted evidence did not demonstrate that the Beneficiary held the foreign equivalent of a U.S. baccalaureate degree followed by at least five years of progressive experience in the specialty and requested the Petitioner submit additional evidence to establish this eligibility requirement.

In response, the Petitioner again reiterated that the Beneficiary's 13 years of work experience are "equivalent to a US Bachelor of Computer Science and his additional five years of work experience." In support of this assertion, the Petitioner provided another expert opinion from a professor of computer science from [] asserting that "based on the accepted equivalency ratio of three years of progressive experience being equated to one year of academic coursework" the Beneficiary's 13 years of experience is "equivalent to no less than four years of academic coursework in the field of Computer Information Systems."

In denying the petition, the Director stated that there was no provision in the regulations for using experience, or experience in conjunction with education, to establish the equivalent of baccalaureate degree. The Director indicated that experience may only be considered in conjunction with a U.S. baccalaureate degree or its foreign equivalent to demonstrate eligibility as a member of the professions holding an advanced degree. As such, the Director denied the petition determining that the Beneficiary was ineligible for the benefit sought since the Petitioner did not establish that he held a U.S. baccalaureate degree or its foreign equivalent followed by at least five years of progressive experience in the specialty.

On appeal, the Petitioner again emphasizes the Beneficiary's work experience, indicating that he has worked for nearly 20 years in occupations related to the offered position. The Petitioner further

¹ EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>. (last visited September 9, 2024).

² AACRAO is described on its website as "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." <http://www.aacrao.org/who-we-are>. (last visited September 9, 2024).

indicates that the Beneficiary's diploma in computer engineering from D-V- University in India was later invalidated due to the institution being "unrecognized" by a high court in India. The Petitioner asserts that prior to this decision by an Indian court "the Beneficiary would have had four (4) years of coursework to a program in Computer Engineering." The Petitioner points to the two submitted expert opinions and asserts these demonstrate that "the Beneficiary has met the requirements of this position due to his thirteen years of experience, which is the equivalent to a U.S. Bachelor of Science [degree] in Computer Science and his additional five years of work experience." The Petitioner does not assert on appeal that the Beneficiary has a United States academic or professional degree or a foreign equivalent degree above that of baccalaureate.

As a preliminary matter, the Petitioner reiterates assertions that have already been presented on the record and it does not articulate how the Director erred in their decision. This alone is grounds for dismissal. 8 C.F.R. § 103.3(a)(1)(v).³ Nevertheless, upon review, we agree with the Director's determination that the Petitioner did not establish that the Beneficiary held a U.S. baccalaureate degree or its foreign equivalent followed by at least five years of progressive experience in the specialty, as required to be eligible as a member of the professions holding an advanced degree. As discussed, to be eligible as an advanced degree professional a beneficiary must possess, and the offered position must require, either a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate; or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2).⁴

The Petitioner continues to argue on appeal that the Beneficiary's education and progressive experience should be considered the foreign equivalent of a U.S. bachelor's degree. However, as aptly noted by the Director, there is no provision in the regulations for using experience, or experience in conjunction with education, to establish the equivalent of baccalaureate degree or its foreign equivalent required to qualify the Beneficiary as an advanced degree professional. *Id.* The Petitioner provided an expert opinion acknowledging that the Beneficiary's coursework was "equivalent to one year of undergraduate coursework from a university in the United States," reflecting that he is ineligible for the benefit sought. In contrast, now on appeal, the Petitioner contends that "the Beneficiary would have had four (4) years of coursework to a program in Computer Engineering." However, the Petitioner provides little supporting evidence to support this conclusion and submitted evidence conflicting this assertion, as noted, in support of the petition. In addition, the Petitioner indicates on appeal that the Beneficiary's foreign diploma was invalidated, suggesting that he has no credible coursework required for the offered position, let alone the required official academic record showing he has the foreign equivalent of a U.S. baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2). The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It has not done so here.

Therefore, for the foregoing reasons, the appeal must be dismissed as the Petitioner did not establish

³ An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

⁴ It is also noteworthy that the labor certification clearly indicated in part H.7. that no alternate combination of education and experience would be acceptable for the offered position and the labor certification clearly required a bachelor's degree in "computer science, computer engineering," or a "related" field. The Petitioner has not established that the Beneficiary met the requirements of the offered position as of the priority date.

that the Beneficiary was eligible for the benefit sought as of the priority date; namely, that he held a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

ORDER: The appeal is dismissed.