U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E- INC.

DATE: JULY 25, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a telecommunications company, seeks to employ the beneficiary as a software engineer. 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 "EB-2" 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. The Director found that the Beneficiary did not have a bachelor's degree and five years of post-baccalaureate experience as of the petition's priority date, and therefore was not eligible for classification as an advanced degree professional.

On appeal the Petitioner submits a brief and supporting documentation. The Petitioner contends that the date of the Beneficiary's bachelor's degree should be considered the date he completed all requirements for the degree as evidenced by his provisional certificate. Based on the earlier date of the provisional certificate, the Petitioner asserts that the Beneficiary also had more than five years of qualifying post-baccalaureate experience, making him eligible for classification as an advanced degree professional.

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

I. LAW

For this advanced degree professional position, the labor certification must provide that the job requires an advanced degree or its equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i). In pertinent part, Department of Homeland Security regulations define the term "advanced degree" 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." 8 C.F.R. § 204.5(k)(2) (emphasis added). To be eligible for this EB-2 classification solely on the basis of a foreign degree equivalent of a U.S. bachelor's degree, a beneficiary must also possess five years of qualifying post-baccalaureate experience. *See* 8 C.F.R. § 204.5(k)(3).

A beneficiary must also have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977).

II. ANALYSIS

The Beneficiary possesses a four-year, eight-semester Bachelor of Technology degree in the field of Information Technology from [redacted] in [redacted] India. The Beneficiary also has eight years of work experience in software engineering with [redacted] in [redacted] India. The record establishes that the Beneficiary's degree is equivalent to a U.S. bachelor's degree in a field of study identified as acceptable on the labor certification, and that his experience qualifies as progressive experience within the meaning of 8 C.F.R. § 204.5(k)(2).

The issue in this proceeding is *when* the Beneficiary received his "degree" from [redacted] More specifically, we will explore whether the "degree" dates from when the Beneficiary actually received the formal *diploma*, or earlier when he completed all of the requirements for the degree and received a *provisional certificate* indicating that his degree was approved.

The Beneficiary's priority date (when the labor certification was filed) is January 25, 2016. The Beneficiary was issued a provisional certificate on March 21, 2007, which stated that he passed his final examination in April 2005 and had completed all requirements for a bachelor of technology degree. The Beneficiary did not receive his formal diploma until April 21, 2010. Prior to working for the Petitioner, the Beneficiary was employed by [redacted] from September 11, 2006, to September 12, 2014.[1] Finding that April 21, 2010, was the date of the Beneficiary's degree, the Director concluded that the Beneficiary did not have five years of qualifying post-baccalaureate experience by the priority date, and was therefore ineligible for classification as an advanced degree professional.

On appeal, the Petitioner maintains that the Beneficiary had the requisite bachelor's degree and more than five years of post-baccalaureate experience if we recognize that his "degree" dates from his completion of all degree requirements and the issuance of the provisional certificate. Calculated from this earlier date rather than the date of his formal diploma, the Beneficiary would have had the required bachelor's degree and five years of qualifying experience well before his employment with Wipro ended in September 2014, and the priority date of January 25, 2016.

The statute and regulations governing the EB-2 classification speak in terms of "degrees," not diplomas. We do not limit our analysis to the date on which a university confers a formal diploma. Applicable EB-2 regulations reflect this distinction. For these EB-2 "bachelor plus five" petitions, the "initial evidence" rule requires submission of an "official academic record" showing the beneficiary has a foreign equivalent "degree." 8 C.F.R. § 204.5(k)(3)(i)(B). An "official academic

[1] On November 3, 2014, the Beneficiary commenced his employment with the Petitioner, which is not qualifying experience under the terms of the labor certification.

record" is not limited to a formal diploma.[2] In fact, in the next provision – relating to EB-2 exceptional ability petitions – the initial evidence rule expressly distinguishes between degree and diploma: "[a]n official academic record showing that the alien has a *degree, diploma, certificate, or similar award* from a college, university . . . ." 8 C.F.R. § 204.5(k)(3)(ii)(A) (emphasis added).[3]

Accordingly, we conduct a case-specific analysis to determine whether, at the time a provisional degree certificate is issued, the individual has completed all substantive requirements to earn the degree and the university has approved the degree. We consider the individual nature of each university's or college's requirements for each program of study and each student's completion of those requirements. A petitioner will bear the burden to establish that a beneficiary's provisional degree certificate reflects that, at the time the certificate was issued, all of the substantive requirements for the degree were met and the degree was in fact approved by the responsible university body.[4]

The record contains the Beneficiary's transcripts from in India, dating from November 6, 2002, to July 9, 2005, listing the courses taken by the Beneficiary in the eight semesters of his Bachelor of Technology (B.Tech) program and indicating that he took seven examinations between July 2002 and April 2005. The record also contains A copy of a Provisional Certificate cum Consolidated Marks Memorandum (PC) from in India, dated March 21, 2007, stating that:

> This is to certify that [the Beneficiary] has qualified himself for the Degree of Bachelor of Technology . . . [having] passed the Examination prescribed therefor in the First Class with Distinction held in April 2005 and that he has done all that is necessary for the formal presentation of the Degree of Bachelor of Technology.

The record also contains a copy of the Beneficiary's bachelor of technology diploma from dated April 21, 2010.

According to the above documents from the Beneficiary completed all of his coursework and examinations for a bachelor of technology degree by April 2005. The issuance of

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[2] *See also* USCIS Adjudicator's Field Manual, Appendix 22-1, Memorandum from Michael D. Cronin, Acting Associate Commissioner, USCIS HQ 70/6.2, *Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants* (March 20, 2000) at 2, https://uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-26573/0-0-0-31107.html (last visited May 16, 2017), ("Whether the alien beneficiary actually possesses the advanced degree should be demonstrated by evidence *in the form of a transcript from the institution* that granted the advanced degree. An adjudicator must similarly consider the *baccalaureate transcript* . . . .") (emphasis added).

[3] While this provision helps clarify that the terms degree and diploma are not equivalent, we note generally that, in contrast to the advanced degree category, the EB-2 exceptional ability category is not grounded entirely in an academic award and thus its initial evidence rule is more expansive than that of the advanced degree category.

[4] Along with any other evidence, petitioners must also submit a copy of a beneficiary's statement of marks or transcript to demonstrate years of study, and coursework completed, along with a copy of the provisional certificate. *See* 8 C.F.R § 204.5(k)(3) (requiring the submission of an official academic record as evidence of a beneficiary's possession of an advanced degree or equivalent of an advanced degree).

the provisional certificate in March 2007 certified that the Beneficiary had completed all substantive requirements and that the degree was in fact approved.

Finally, we turn to information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),[5] and note that it accords with the Petitioner's claim and evidence. On the matter of provisional degree certificates issued by Indian universities, EDGE states:

> The Provisional Degree Certificate is evidence of completion of all requirements for the degree in question, the name of the degree and the date upon which it was approved by the responsible university governing body, and is comparable to an official US academic transcript with a degree statement certifying completion of all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate at universities in the United States.[6]

EDGE additionally notes that some students never receive their "final Degree Certificate," but instead rely on the provisional degree certificate as evidence of degree completion. *Id.*

Therefore, we conclude that the Beneficiary's provisional certificate, together with his statement of marks, demonstrate that he completed his degree on March 21, 2007. We also find that he possessed over five years of post-baccalaureate experience by the priority date.

III. CONCLUSION

We will sustain the appeal because the Petitioner has established that the Beneficiary meets the minimum education and experience requirements of the labor certification and for classification as an advanced degree professional.

ORDER: The appeal is sustained.

Cite as *Matter of E- Inc.*, ID# 406002 (AAO July 25, 2017)

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[5] AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries." www.aacrao.org/about (last visited July 19, 2017). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php (last visited July 19, 2017).

[6] *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degree-certificate (last visited July 19, 2017).