U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-H-N-B-

DATE: MAR. 31, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a bank, seeks to employ the Beneficiary as a programmer/analyst senior. 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. A bachelor's degree alone does not qualify as an "advanced degree," but a bachelor's and an additional five years of post-baccalaureate progressive experience will suffice for EB-2 classification purposes.

The Director of the Nebraska Service Center found that, based on the issuance date of the Beneficiary's bachelor's degree diploma, the Beneficiary could not show, as required, a minimum of five years of post-baccalaureate experience to establish that she possesses the equivalent of an advanced degree.

On appeal, the Petitioner contends that the Beneficiary does have the five years of post-baccalaureate experience, which should be measured from when she received a provisional certificate demonstrating her degree was complete and approved and not from when the diploma itself was later issued. The appellate record includes additional evidence and an *amicus* brief.[1]

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL).[2] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages

[1] We thank the for its brief and have considered their points herein.

[2] The date the labor certification is filed, in cases such as this one, is called the "priority date." A beneficiary must be eligible as of that date, and so in this case the Beneficiary must have had the five years' requisite experience by the date the labor certification was filed.

and working conditions of domestic workers similarly employed. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national 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.

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. 8 C.F.R. § 204.5(k)(3).

II. ANALYSIS

The Beneficiary possesses a bachelor's degree in engineering from [redacted] in India. There is no question that the Beneficiary's degree qualifies her for EB-2 classification or that her post-degree experience qualifies as progressive experience. The only question is *when* [redacted] conferred the "degree" to the Beneficiary. More specifically, we explore here whether the five years of experience can be only measured from when she received the formal *diploma* itself, or earlier, when she completed all the requirements for the degree and received what is commonly termed a *provisional certificate* reflecting that her degree was approved. We conclude that, based on the specific circumstances and evidence in this case, the provisional certificate constitutes her official academic record of her "degree" for purposes of calculating the five-year period of post-graduate experience.

Several dates are critical to this case. The Beneficiary's priority date (the date the labor certification was filed) is May 18, 2015. [redacted] issued her a provisional certificate on October 15, 2008, but she did not receive her formal diploma until February 10, 2009. The record establishes that she accrued approximately four years and ten months of qualifying experience during this period between her *diploma* date and her priority date. The Director thus concluded that the Beneficiary fell just short of the five-year requirement and denied the petition.

On appeal, the Petitioner maintains that the Beneficiary did accrue the requisite five years of post-degree experience if we recognize that her "degree" was conferred on the earlier date of her provisional certificate, or October 15, 2008. The Beneficiary began working in a qualifying capacity a few weeks later, in November 2008, nearly three months before she received her formal diploma. So the Beneficiary has the required five years' experience if measured from the date of her provisional certificate, but not if measured from the date of her diploma.

The statute and regulations governing the EB-2 classification speak in terms of "degrees," not diplomas. So, from the outset, it is clear that we cannot simply limit our analysis to the date on which a university confers a formal diploma on its newest alumni. 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 record" is not limited to a formal diploma.[3] In fact, in the very 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).[4]

Accordingly, we must conduct a case-specific analysis to determine whether, at the time a provisional certificate is issued, the individual has completed all substantive requirements to earn the degree and the university has approved the degree. We must 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 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.[5]

Here, the record demonstrates that, by issuance of the provisional certificate in October 2008, the Beneficiary had completed all substantive requirements and the university had in fact approved the degree. The record contains the following university documents contemporaneous with the relevant events: (1) a copy of the Beneficiary's statement of marks; (2) a copy of the Beneficiary's provisional certificate issued on October 15, 2008, which states that the Beneficiary is "qualified for the award of the degree of bachelor of engineering" and that the Beneficiary "passed the prescribed examination;" and (3) a copy of the Beneficiary's diploma that issued on February 10, 2009.

Finally, we have turned to information publicly available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global

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[3] *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), https://uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-26573/0-0-0-31107.html (last visited Mar. 30, 2017), ("Whether the alien beneficiary 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).

[4] 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.

[5] Along with any other proffered 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).

Education (EDGE),[6] and note that it accords with the Petitioner's claim and evidence. On the matter of provisional certificates issued by Indian universities, AACRAO 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.[7]

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.*

III. CONCLUSION

The provisional certificate, together with her statement of marks, demonstrates that the Beneficiary completed all the substantive requirements and that the university approved her degree. The final diploma here was simply a delayed formality. We find that the issuance of the provisional certificate conferred on the Beneficiary the foreign equivalent of a bachelor's degree. Applying the provisional certificate date, we also find that she obtained at least five years of qualifying post-baccalaureate experience. Accordingly, the Petitioner has established that the Beneficiary meets the minimum education and experience requirements of the labor certification and of EB-2 classification.

ORDER: The appeal is sustained.

Cite as *Matter of T-H-N-B-*, ID# 12369 (AAO Mar. 31, 2017)

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[6] 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." http://www4.aacrao.org/centennial/about.htm (last visited Mar. 30, 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 Mar. 30, 2017).

[7] *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degree-certificate (last visited Mar. 30, 2017).