U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-A-, INC.

DATE: MAY 5, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting company, seeks to employ the Beneficiary as a systems analyst. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(B)(3)(A)(ii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the Beneficiary did not qualify for the requested classification and the job offered under the terms of the labor certification because he did not have a baccalaureate degree or a foreign equivalent degree as of the petition's priority date.

On appeal the Petitioner submits a brief and additional documentation.[1] The Petitioner contends that the date of the Beneficiary's baccalaureate degree should be considered the date he received a provisional degree certificate demonstrating that the degree requirements were complete and approved, not the later date when the diploma itself was issued. Based on the earlier date of the provisional certificate, the Petitioner asserts that the Beneficiary had his baccalaureate degree long before the petition's priority date, and therefore satisfied the minimum educational requirement of the labor certification and for classification as a professional.

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

[1] The additional documentation includes a copy of the "CERTIFICATE OF MERGER OF (A Pennsylvania Corporation) WITH AND INTO (A New Jersey Corporation)," filed on June 8, 2016, whereby the former corporation ceased to exist and the latter corporation was the surviving entity. Under the merger agreement, effective July 1, 2016, took possession of all the assets and property of and was vested with all its rights, privileges, immunities, powers, franchises, authorities, and obligations. has established that it is the successor-in-interest to for the purposes of this proceeding.

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 the 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 and working conditions of domestic workers similarly employed. 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.

Section 203(b)(3)(A)(ii) of the Act grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

The beneficiary must meet all of the educational, experience, and other requirements of the offered position set forth on the labor certification by the priority date of the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977).

II. ANALYSIS

The Petitioner's Form I-140, Immigrant Petition for Alien Worker, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which had been filed with and certified by the DOL. Section H of the labor certification specifies that the minimum educational requirement to qualify for the job of systems analyst is a bachelor's degree in engineering, computer science, or a related field of study, or a foreign educational equivalent.

The Beneficiary possesses a bachelor of engineering (B.E.) degree from ' in India. The record establishes that the Beneficiary's degree is equivalent to a U.S. bachelor's degree in engineering. The issue in this proceeding is *when* the Beneficiary received his "degree" from

[2] The date the labor certification is filed is called the "priority date." A beneficiary must be eligible for the requested classification as of that date.

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 degree certificate* indicating that his degree was approved. We conclude, based on the specific circumstances and evidence in this case, that the provisional degree certificate constitutes the official university record of the Beneficiary's "degree" for purposes of dating the degree.

Several dates are critical to this case. The Beneficiary's priority date (when the labor certification was filed) is May 20, 2015. The Beneficiary was issued a provisional degree certificate on July 16, 2006. However, the Beneficiary did not receive his formal diploma until July 12, 2016, which was after the priority date. The Director found that July 12, 2016, was the date of the Beneficiary's degree and concluded that the Beneficiary did not have a baccalaureate degree or a foreign equivalent degree as of the priority date, May 20, 2015. Accordingly, the Director determined that the Beneficiary was ineligible for the requested classification and not qualified for the job offered under the terms of the labor certification.

On appeal, the Petitioner maintains that the Beneficiary had the requisite bachelor's degree before the priority date if we recognize that his "degree" was conferred on the date of his provisional certificate, which was July 16, 2006.

The statute and regulations governing the EB-3 professional classification speak in terms of "degrees," not diplomas. So it is clear that we cannot limit our analysis to the date on which a university confers a formal diploma. Applicable EB-3 regulations reflect this distinction. The "initial evidence" rule requires submission of an "official college or university record showing the date the baccalaureate degree was awarded." 8 C.F.R. § 204.5(l)(3)(ii)(C). An "official college or university record" is not limited to a formal diploma, as indicated in the provision relating to EB-2 exceptional ability petitions. For that visa classification the initial evidence rule expressly distinguishes between degree and diploma by requiring: "[a]n official academic record showing that the alien has a *degree, diploma, certificate, or similar award* from a college, university, school, or other institution of learning . . . ." 8 C.F.R. § 204.5(k)(3)(ii)(A) (emphasis added).[3]

Accordingly, we must 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 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 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]

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[3] While this provision helps clarify that the terms degree and diploma are not equivalent, we note generally that, in contrast to the EB-3 professional 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 professional category.

[4] Along with any other proffered evidence, petitioners must also submit a copy of a beneficiary's statement of marks or

The record contains the following pertinent documentation:

1. Copies of the Beneficiary's statements of marks from issued between July 29, 2003, and July 10, 2006, listing the courses taken by the Beneficiary and the marks obtained in each of the eight semesters of his bachelor of engineering program, and indicating that he took examinations for each of those semesters between June 2003 and June 2006.
2. Transcripts of the Beneficiary's academic record, on the letterhead of and co-signed by the registrar and examination section of confirming that the Beneficiary was a student at the during the academic years 2002-2006, and took examinations under the jurisdiction of
3. A copy of the Provisional Degree Certificate from dated July 16, 2006, stating that the Beneficiary "who was a student at has completed all the requirements and has become eligible for award of BE, Information Technology, in June 2006 . . . . The degree shall, however, be conferred at the forthcoming convocation."
4. A copy of the Bachelor of Engineering, Information Technology, degree certificate from dated July 12, 2016, certifying that "[the Beneficiary], having passed the Bachelor of Engineering, Information Technology, Examination in 2006 A.D. of this University . . . is awarded the degree of Bachelor of Engineering."
5. A letter from the registrar of dated August 22, 2016, certifying that "[the Beneficiary] has completed BE Degree in Information Technology in the year 2006 from This institute is affiliated to "

According to the above documents from the Beneficiary completed all of his coursework and examinations for a bachelor of engineering degree by June 2006. The issuance of the provisional degree certificate in July 2006 certified that the Beneficiary had completed all substantive requirements and that the university approved his degree.

Finally, we turn to information publicly available 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, 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

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transcript to demonstrate years of study, and coursework completed, along with a copy of the provisional certificate. *See* 8 C.F.R § 204.5(l)(3)(ii)(C) (requiring the submission of an official college or university record as evidence of a beneficiary's possession of a baccalaureate or foreign equivalent degree).

[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 April 28, 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 April 28, 2017).

> 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.*

III. CONCLUSION

The provisional degree certificate, together with the statements of marks and transcripts, demonstrate that the Beneficiary completed all the substantive requirements for a bachelor of engineering and that the university approved his degree. The final diploma was simply a delayed formality. We find that the issuance of the provisional degree certificate in July 2006 conferred on the Beneficiary the foreign equivalent of a bachelor's degree in engineering. Since the degree accorded with the field of study requirement of the labor certification and preceded the priority date, the Petitioner has established that the Beneficiary meets the minimum educational requirement of the labor certification and is eligible for EB-3 classification as a professional.

ORDER: The appeal is sustained.

Cite as *Matter of C-A-, Inc.*, ID# 286135 (AAO May 5, 2017)

[6] *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degree-certificate (last visited April 27, 2017).