U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-A-S-, INC.

DATE: SEPT. 20, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a production management services company, seeks to employ the Beneficiary as a senior quality assurance (QA) 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 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 holds a full U.S. baccalaureate or foreign equivalent degree, and that the Beneficiary does not have the five years of post-baccalaureate experience required for the offered job.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary's postgraduate diploma represents attainment of a level of education comparable to a bachelor's degree in the United States, and that the Beneficiary obtained the required five years of post-baccalaureate experience following completion of his diploma requirements.

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

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).[1] The priority date of the petition is February 26, 2016.[2]

[1] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Master's degree in computer science, computer information systems, related.
H.5. Training: None required.
H.6. Experience in the job offered: 24 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: Bachelor's degree and five years of experience.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 24 months in quality assurance engineering positions or related.
H.14. Specific skills or other requirements: Qualifying experience must include: 2 years of experience with Selenium WebDriver, Java, TestNG, Junit, SoapUI and REST; and experience with Perl and C#. Experience in H.8-C must be post-baccalaureate and progressive experience.

Part J of the labor certification states that the Beneficiary possesses a bachelor's degree in computer information systems from in India, completed in 2003. The record contains a copy of the Beneficiary's bachelor of commerce diploma and marks statements from the in India, issued in 1996. The record also contains a copy of the Beneficiary's postgraduate diploma in computer applications issued in 2011 and statement of marks from in India.

The record also contains two evaluations of the Beneficiary's educational credentials prepared by The first evaluation equates the Beneficiary's bachelor of commerce degree, together with his postgraduate diploma in computer applications, to a U.S. bachelor of science degree in computer information systems. The second evaluation equates the Beneficiary's postgraduate diploma in computer applications to a U.S. awarded bachelor of science degree in computer information systems.[3]

[3] We note that the educational evaluations differ. One evaluation combines the Beneficiary's education, and one does not, in concluding that the Beneficiary possesses the equivalent of a U.S. awarded bachelor of science degree in computer information systems. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony); *Viraj, LLC v. U.S. Att'y Gen.*, 2014 WL 4178338 *4 (11th Cir. 2014).

Part K of the labor certification states that the Beneficiary possesses the following employment experience:

- Senior QA engineer with the Petitioner in California, from June 9, 2014, to the present;
- Programmer analyst with in North Carolina, from January 17, 2012, to June 6, 2014;
- Senior V&V lead with in Massachusetts, from May 18, 2006, to February 10, 2012;[4]
- Senior V&V lead with in India, from September 1, 2003, to May 17, 2006; and
- CAD executive with in India, from September 9, 1996, to August 30, 2003.

The record contains the following experience letters:[5]

- A letter from stating that the company employed the Beneficiary full-time from September 1, 2003, to February 10, 2012, and that at "the time of leaving the services of the company he was designated as Senior V&V Lead." The letter describes his duties;
- A letter dated September 1, 2014, from stating that the company employed the Beneficiary as a full-time programmer analyst from January 17, 2012, to June 6, 2014. The letter describes his duties; and
- A letter dated July 27, 2016, from stating that the company employed the Beneficiary as a full-time programmer analyst from February 13, 2012, to June 6, 2014. The letter clarified that he was offered the job on January 17, 2012, and started work on February 13, 2012. The letter describes his duties.

II. LAW AND ANALYSIS

A. Employment-Based Immigration

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the DOL. *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 and working conditions of domestic

[4] name was formerly and

[5] Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

workers similarly employed. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files 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.

B. Beneficiary's Qualifications

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). Pursuant to 8 C.F.R. § 204.5(k)(2), 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.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional 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.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *About AACRAO*, http://www.aacrao.org/home/about (last visited September 19, 2017). According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." *AACRAO EDGE*, http://edge.aacrao.org/info.php (last visited September 19, 2017).

According to EDGE, the Beneficiary's three-year bachelor of commerce degree from the [redacted] in India is comparable to three years of university study in the United States.[6] EDGE

[6] *AACRAO EDGE*, http://edge.aacrao.org/country/credential/bachelor-of-arts-ba-bachelor-of-commerce-bcom-bachelor-

also discusses Indian postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE states that a postgraduate diploma following a two-year bachelor's degree represents attainment of a level of education comparable to one or two year(s) of university study in the United States.[7] EDGE also states that a postgraduate diploma following a three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States.[8] However, the "Credential Author Notes" section states:

> Postgraduate Diplomas should be issued by an accredited university or an institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.[9]

We accept EDGE's conclusion that an Indian postgraduate diploma following a three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States, provided the program required a bachelor's degree for entry and the university was an accredited university or an institution approved by AICTE at the time it issued the postgraduate diploma.

The evidence in the record on appeal establishes that a bachelor's degree was required for admission into the postgraduate diploma program in computer applications [redacted] However, the evidence in the record on appeal does not establish that the Beneficiary's postgraduate diploma was issued by an accredited university or an institution approved by AICTE.

As previously noted, the Petitioner submitted two educational evaluations. The first evaluation states that [redacted] is "a recognized institution of higher education in India." The second evaluation states that [redacted] "is accredited by the National Assessment and Accreditation Council (NAAC) of India with Grade A rating" and "by the Government of India's University Grants Commission (UGC)," and that it is a "member of the Association of Indian Universities." However, neither evaluation provides support for these statements, such as letters from the accrediting organizations or excerpts from the organizations' official websites showing that [redacted] in [redacted] India was an accredited university or institution approved by AICTE at the time it issued the Beneficiary's postgraduate diploma.

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of-science-bsc?cid=single (last visited September 19, 2017). A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).

[7] *AACRAO EDGE*, http://edge.aacrao.org/country/credential/post-graduate-diploma-pgd?cid=single (last visited September 19, 2017).

[8] *Id.*

[9] *Id.*

[10] The record contains the entrance requirements from the university.

Thus, the Petitioner has not established that in India, was an accredited university or institution approved by AICTE at the time it issued the Beneficiary's postgraduate diploma.[11] Therefore, the Petitioner has not established that the Beneficiary holds a U.S. baccalaureate or foreign equivalent degree.

Further, even if the Petitioner had established that the Beneficiary holds a U.S. baccalaureate or foreign equivalent degree, it has not established that the Beneficiary has at least five years of progressive post-baccalaureate experience. The Beneficiary's postgraduate diploma was issued on December 27, 2011, although the diploma also reflects a handwritten date of October 11, 2010. The diploma indicates that the Beneficiary took his final examinations in April 2003. The Director noted that the Beneficiary accrued less than five years of qualifying experience during the period between October 11, 2010, and the priority date of February 26, 2016. The Director thus concluded that the Beneficiary fell short of the five year post-baccalaureate experience requirement.

On appeal, the Petitioner maintains that the Beneficiary did accrue the requisite five years of post-degree experience if we recognize that his postgraduate diploma was conferred on the earlier date of April 21, 2003, when the Beneficiary passed his final examinations.

The statute and regulations governing the EB-2 classification use the terms "degree" and "official academic record," not "diplomas." For EB-2 "bachelor plus five" petitions, the "initial evidence" rule requires the submission of an "official academic record" showing that a beneficiary has a foreign equivalent "degree." 8 C.F.R. § 204.5(k)(3)(i)(B). Therefore, an "official academic record" is not limited to a diploma.[12] Accordingly, we must conduct a case-specific analysis to determine whether the Beneficiary completed all substantive requirements to earn the degree and whether the university approved the degree as demonstrated by an official academic record. To do this, we consider the individual nature of the university's requirements for the Beneficiary's program of study and his completion of those requirements. The Petitioner bears the burden to establish that all of the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body.[13]

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[11] The Directorate of Distance Education appears to be a separate division of It is not clear whether the Directorate of Distance Education was accredited or approved by UGC and/or AICTE when the Beneficiary's degree was issued.

[12] *See Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017); *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 September 19, 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).

[13] 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. *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).

Here, the Petitioner did not submit an official academic record demonstrating that the Beneficiary completed all substantive requirements of his postgraduate diploma and that the university approved the diploma in April 2003. When determining whether a document is an official academic record that substantiates the claimed degree, we may consider whether the document was issued by the university in the normal course of its business; whether the document was originally issued contemporaneous with events; and whether the document indicates that all requirements for the degree, in addition to the required coursework, have been completed.[14]

The record contains the following university documents: (1) a copy of the Beneficiary's statement of marks showing that he passed the final exams in April 2003; (2) a copy of the Beneficiary's postgraduate diploma issued on December 27, 2011; (3) a letter dated November 21, 2014, from the deputy registrar and controller of examinations of [redacted] verifying the genuineness of the Beneficiary's statement of marks, and stating that the Beneficiary passed examinations related to his postgraduate diploma in computer applications on April 21, 2003; and (4) a letter dated August 23, 2016, from the program officer of [redacted] in [redacted] India, stating that the Beneficiary "appeared in the examination held in April 2003 and passed all the subjects" for his postgraduate diploma in April 2003, and that since the Beneficiary "paid the balance fees in the year 2010, therefore he was awarded the [postgraduate diploma in computer applications] Degree Certificate later."

Although a university-issued statement of marks is an official academic record, the Beneficiary's statement of marks alone does not demonstrate that the Beneficiary completed his diploma requirements in April 2003. The Beneficiary's statement of marks simply confirms that he passed the final examinations for his diploma in April 2003. Further, as previously noted, the diploma was issued on December 27, 2011, although it also reflects a handwritten date of October 11, 2010. However, the diploma does not indicate the significance of the October 11, 2010, date. It states that the Beneficiary was "admitted to the postgraduate diploma in computer applications" and was "certified by duly appointed Examiners to be qualified to receive the same, and having been placed by them in the second class at the Examination held in April 2003." The diploma alone does not demonstrate that the Beneficiary completed his diploma requirements in April 2003.

Further, the Petitioner did not establish that the letters from the university are official academic records that substantiate the claimed diploma. The letter dated November 21, 2014, from the deputy registrar and controller of examinations, written over 11 years after the Beneficiary claims to have

[14] For example, a university-issued provisional certificate issued contemporaneous with events (stating that all degree requirements, including required coursework, have been met) together with a statement of marks constitutes an official academic record that may demonstrate that a beneficiary completed all the substantive requirements for a degree and that the university approved the degree. *Matter of O-A-, Inc.*, Adopted Decision 2017-03 at 4. We further note that the provisional degree certificate in *Matter of O-A-, Inc.* was determined by AACRAO EDGE to be "evidence of completion of all requirements for the degree in question . . . and is comparable to an official US academic transcript with a degree statement certifying completion of all requirements for the degree . . . ." *See India: Provisional Degree Certificate*, AACRAO, http://edge.aacrao.org/country/credential/provisional-degree-certificate (last visited September 19, 2017). A provisional certificate was not issued in this case.

completed the postgraduate diploma, verifies the information contained in the Beneficiary's statement of marks. The letter appears to have been issued in response to a request from the Beneficiary, not in the university's normal course of its business. In addition, the letter does not state that all diploma requirements were completed. It also does not reflect that the university approved the award of the Beneficiary's diploma in April 2003. Therefore, the letter does not demonstrate that the Beneficiary completed all substantive requirements for the diploma and was approved by the university for the diploma as of the date on which he completed his final examinations in April 2003.

The letter dated August 23, 2016, from the program officer, written over 13 years after the Beneficiary claims to have completed the diploma, states that the Beneficiary passed all the subjects for his postgraduate diploma in April 2003. The letter appears to have been issued in response to a request from the Beneficiary, not in the university's normal course of its business. Further, the letter does not state that all diploma requirements were completed in April 2003, or that the university approved the award of the Beneficiary's diploma in April 2003. Therefore, the letter does not demonstrate that the Beneficiary completed all substantive requirements for the postgraduate diploma and was approved by the university for the diploma as of the date on which he completed his final examinations in April 2003.

As discussed above, the Petitioner has not established that passing the final examinations means that the Beneficiary completed all substantive postgraduate diploma requirements such that he had earned his diploma in April 2003. The record does not contain evidence of the Beneficiary's five years of experience between either October 11, 2010, or December 27, 2011, the two dates listed on his postgraduate diploma, and the priority date of the petition.

III. CONCLUSION

The Petitioner has not established that the Beneficiary's postgraduate diploma in computer applications from India is the equivalent of a U.S. baccalaureate degree. The Petitioner has also not established that the Beneficiary possessed five years of post-baccalaureate employment experience as of the priority date of the petition. Therefore, the Beneficiary does not meet the minimum requirements of the offered position set forth on the labor certification and cannot be classified as an advanced degree professional.

ORDER: The appeal is dismissed.

Cite as *Matter of G-A-S-, Inc.*, ID# 431867 (AAO Sept. 20, 2017)