U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 23, 2017 **PM-602-0145**

Policy Memorandum

SUBJECT: *Matter of A-T- Inc*, Adopted Decision 2017-04 (AAO May 23, 2017)

Purpose
This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of A-T- Inc* as an Adopted Decision. Accordingly, this adopted decision establishes policy guidance that applies to and binds all U.S. Citizenship and Immigration Services (USCIS) employees. USCIS personnel are directed to follow the reasoning in this decision in similar cases.

Matter of A-T- Inc clarifies that, in order to qualify for an H-1B numerical cap exemption based upon a master's or higher degree, the conferring institution must have qualified as a "United States institution of higher education" at the time the beneficiary's degree was earned.

Use
This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information
Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

ADOPTED DECISION

MATTER OF A-T- INC

ADMINISTRATIVE APPEALS OFFICE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DEPARTMENT OF HOMELAND SECURITY

May 23, 2017[1]

To qualify for an H-1B numerical cap exemption based upon a master's or higher degree, the conferring institution must have qualified as a "United States institution of higher education" at the time the beneficiary's degree was earned.

FOR THE PETITIONER: Leena R. Kamat, Esquire, Dublin, California

The Petitioner seeks to temporarily employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). H-1B visas are statutorily capped at 65,000 per year (H-1B Cap) but, as here, a petitioner may seek a cap exemption for beneficiaries who have "earned a master's or higher degree from a United States institution of higher education (as defined in . . . 20 U.S.C. 1001(a)) . . . ." The statute also caps the number of exemptions at 20,000 per year (Master's Cap exemption).[2]

The Director of the California Service Center denied the H-1B petition, concluding that the Beneficiary did not qualify for the claimed Master's Cap exemption. More specifically, the Director determined that the degree-conferring institution was not accredited at the time it awarded the Beneficiary's master's degree, and thus the Beneficiary had not earned his degree, as required, from a "United States institution of higher education."

[1] On December 31, 2013, we issued this decision as a non-precedent decision. We have reopened this decision on our own motion under 8 C.F.R. § 103.5(a)(5)(i) for the purpose of making revisions in preparation for U.S. Citizenship and Immigration Services designating it as an Adopted Decision.
[2] *See* section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A) (setting the 65,000 cap); section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C) (providing for 20,000 exemptions).

On appeal, the Petitioner contends (1) that the Act does not require that the degree be from a United States institution of higher education *at the time the degree is awarded*, and (2) in the alternative, USCIS should have adjudicated the petition under the general H-1B cap if it was not eligible under the Master's Cap exemption.

Upon *de novo* review, we will dismiss the appeal. As discussed below, timing is critical for both of these issues.

I. UNITED STATES INSTITUTION OF HIGHER EDUCATION

First, we must determine *when* a United States institution is deemed to be one of higher education for purposes of the Master's Cap exemption. Here, the Beneficiary earned his degree from the International Technological University (ITU), in California, on December 31, 2010, before the university obtained its preaccreditation or accreditation status. The record contains a letter from ITU, stating that the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC) granted ITU "Candidacy status" in 2011.[3] According to the WASC Senior College and University Commission website, candidacy status is the same as preaccreditation status.[4]

The Petitioner asserts that the master's degree does not have to be from a United States institution of higher education as of the time the degree is awarded in order to qualify for the Master's Cap exemption. Rather, the Petitioner asserts that a beneficiary may qualify for the Master's Cap exemption if the beneficiary earned a degree from an institution that qualified as an institution of higher education at the time of adjudication. We disagree.

Eligibility for a Master's Cap exemption is reserved for an individual who "*has earned* a master's or higher degree *from a United States institution of higher education* (as defined in . . . 20 U.S.C. 1001(a)) . . . ." Section 214(g)(5)(C) of the Act (emphasis added). In turn, an "institution of higher education" is defined, among other requirements, as a public or nonprofit educational institution that:

> *is accredited* by a nationally recognized accrediting agency or association, *or if not so accredited, is an institution that has been granted preaccreditation status* by such an agency or association that has been recognized by the [U.S. Secretary of Education] for the granting of preaccreditation status, and the Secretary has determined that there

[3] The ITU letter does not specify when in 2011 it obtained "Candidacy status," nor could we locate this information on the WASC or ITU websites. The U.S. Department of Education recognizes WASC as a "reliable authorit[y] concerning the quality of education … offered by the institutions" it accredits. U.S. Dep't of Education, Regional and National Institutional Accrediting Agencies, http://www2.ed.gov/admins/finaid/accred/accreditation_pg6.html (last visited May 24, 2017).

[4] *See* http://www.wascsenior.org/directory/legend (last visited May 24, 2017).

> is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

20 U.S.C. § 1001(a) (2012) (originally enacted as the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219) ("Higher Education Act") (emphasis added).

The statute requires that the graduate must have "earned" a degree "from a United States institution of higher education" and, by definition, such institution "is accredited" or "is an institution that has been granted preaccreditation status." The statute does not, however, expressly state whether the institution must have been (pre-)accredited at the time the degree was earned or at some different point in time when a relevant immigration benefit is adjudicated.

For the following reasons, we construe these provisions to require that the institution's qualifications must be established at the time the degree is earned. First, requiring beneficiaries to earn their degrees from institutions that, at a minimum, are preaccredited at the time the degree is earned helps ensure the quality of education necessary to merit a Master's Cap exemption.[5] Assessing the institution's qualifications at some later time – such as when an immigration benefit is requested for one of the institution's graduates – does not advance those quality considerations. Second, we believe the Petitioner's proffered interpretation – requiring (pre-)accreditation status at the time of immigration benefit adjudication – could lead to imprudent and unintended results. If, as the Petitioner asserts, the determination is based on whether the institution qualified as an institution of higher education at the time of the immigration benefit adjudication, then a beneficiary could qualify for the Master's Cap exemption based on (pre-)accreditation that happens long after the degree was earned which would not necessarily reflect the quality of the beneficiary's education. Conversely, a beneficiary who earned a qualifying degree from an institution of higher education, and who would have qualified for the Master's Cap exemption, could subsequently become ineligible for the exemption if the institution lost its accreditation, in some cases long after the beneficiary earned a qualifying degree. Thus, the Petitioner's proffered interpretation introduces uncertainty for graduates seeking immigration benefits over time. If we were to construe the statute that way, an individual's eligibility for the Master's Cap exemption would change along with the accreditation or preaccreditation status of his or her alma mater. In contrast, under our interpretation, an individual who earns a degree from a (pre-)accredited institution may continue to qualify for the Master's Cap exemption even if the institution later closes or loses its (pre-)accreditation status.[6]

[5] *See* U.S. Dep't of Education, FAQS About Accreditation, https://ope.ed.gov/accreditation/FAQAccr.aspx (last visited May 24, 2017) (stating that the "goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality").

[6] However, if the conferring institution later revokes the degree because it was improperly granted or obtained through fraudulent means, USCIS will not consider the degree to have been "earned."

Because we interpret the statute to require that the institution's qualifications must be established at the time the degree is earned, the date the Beneficiary earned his master's degree is critical.[7] Here, the record does not establish that ITU was accredited or preaccredited in 2010 when the Beneficiary earned his master's degree. Accordingly, we conclude the Beneficiary did not earn his degree from an "institution of higher education," and he is thus ineligible for the Master's Cap exemption.

II. ALTERNATIVE BASIS OF ELIGIBILITY

The Petitioner contends that, even if the Beneficiary cannot qualify for a Master's Cap exemption, USCIS should also examine his eligibility under the general H-1B Cap. The relevant regulation generally does not permit H-1B petitioners to claim eligibility under alternative grounds: "Petitions indicating that they are exempt from the numerical limitation but that *are determined* by USCIS *after the final receipt date* to be subject to the numerical limit will be denied . . . ." 8 C.F.R. § 214.2(h)(8)(ii)(B) (emphasis added). The "final receipt date" is when USCIS notifies the public that it has received sufficient numbers of petitions to reach the H-1B Cap. The date a beneficiary's cap exemption is "determined" is the date on which USCIS articulates its adjudication in a decision. *See* 8 C.F.R. §§ 103.2(b)(19), 103.3(a)(1)(i), and 103.8(a).

Here, the Director's determination of cap exemption ineligibility was issued after the final receipt date, and so the petition was properly denied. On April 4, 2013, the Petitioner filed the H-1B petition which indicated that the Beneficiary's master's degree from ITU qualified him for the Master's Cap exemption.[8] The next day (April 5th), USCIS issued a notice that, as of that date, it had received sufficient numbers of H-1B petitions to reach the H-1B Cap for FY14.[9] Therefore, April 5, 2013 is the FY14 "final receipt date," for acceptance of cap subject H-1B petitions. Because the Director determined, after that final receipt date, that the Beneficiary was ineligible for a Master's Cap exemption, the Director must and properly did deny the petition without considering eligibility under the general H-1B Cap.

III. CONCLUSION

The Petitioner has not established that the Beneficiary is eligible for the Master's Cap exemption.

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[7] To determine when a beneficiary's degree was earned, we must conduct a case-specific analysis to determine whether the individual has completed all substantive requirements to earn the degree and the university or college has approved the degree. We must consider evidence presented regarding the university or college's requirements for the program of study and the student's completion of those requirements. The petitioner will bear the burden to establish that all of the substantive requirements for the degree were met and the degree was in fact approved by the university or college. *See Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017).

[8] Because the FY14 H-1B cap filings exceeded the numerical limit and Master's Cap exemption permitted by statute, USCIS used a computer-generated random selection process (commonly known as the "lottery") to determine which petitions would be selected for adjudication. The Beneficiary in the instant case was granted a number under the Master's Cap exemption and was therefore not granted one of the general 65,000 cap numbers.

[9] *See* http://www.uscis.gov/news/alerts/uscis-reaches-fy-2014-h-1b-cap (last visited May 24, 2017).

ORDER: The appeal is dismissed.

Cite as *Matter of A-T- Inc*, Adopted Decision 2017-04 (AAO May 23, 2017)