

(b)(6)



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF P-, INC.

DATE: OCT. 13, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a developer and manufacturer of pharmaceutical products, seeks to permanently employ the Beneficiary as director of quality assurance under the immigrant classification of member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). The Director, Nebraska Service Center, denied the petition and the Petitioner's following motion to reopen. The matter is now before us on appeal. The appeal will be dismissed.

An ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL), accompanies the petition.¹ The petition's priority date is April 19, 2013, the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

The Director concluded that the record did not establish the Beneficiary's educational qualifications for the offered position or the requested preference classification. Accordingly, he denied the petition on April 23, 2014.

On July 1, 2014, the Director also denied the Petitioner's motion to reopen. Specifically, he found that the Beneficiary's "graduate" certificate from the [REDACTED] in the United Kingdom did not constitute a foreign equivalent of a Bachelor's degree. He therefore concluded that the record did not establish the Beneficiary's possession of a Bachelor's degree plus five years of experience as specified on the accompanying labor certification and as required for classification as an advanced degree professional.

On appeal, the Petitioner asserts that the Beneficiary's graduate certificate effectively constitutes a Bachelor's degree. The Beneficiary's qualifying experience is not at issue.

¹ The labor certification identifies the geographic area of intended employment as [REDACTED], Ohio. However, the Form I-140, Petition for Alien Worker, states the Beneficiary's employment in [REDACTED] Ohio. Online DOL information indicates that [REDACTED] and [REDACTED] are in the same Metropolitan Statistical Area (MSA). *See* Foreign Labor Certification Data Ctr., at <http://www.flcdatacenter.com/OESWizardStep2.aspx?stateName=Ohio> (accessed Sept. 28, 2015). Therefore, the labor certification remains valid for employment in [REDACTED]. *See* 20 C.F.R. § 656.3 (defining the term "area of intended employment" for labor certification purposes to include any location within the same MSA).

(b)(6)

Matter of P-, Inc.

The Petitioner's appeal is properly filed and alleges specific errors in law and fact. We conduct appellate review on a *de novo* basis. *See, e.g., Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004) (stating that we exercise *de novo* review on appeal). We consider all pertinent evidence of record, including new evidence properly submitted on appeal.²

I. EDUCATIONAL REQUIREMENTS FOR THE REQUESTED CLASSIFICATION AND THE OFFERED POSITION

Section 203(b)(2)(A) of the Act provides preference classification to qualified immigrants who are members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The term "advanced degree" means "any 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).

A petition for an advanced degree professional must include either: an official academic record showing a beneficiary's possession of a U.S. advanced degree or a foreign equivalent degree, 8 C.F.R. § 204.5(k)(3)(i)(A); or an official academic record showing a beneficiary's possession of a U.S. baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from employer(s) of the beneficiary's possession of at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

When a petitioner relies on a beneficiary's possession of a Bachelor's degree and five years of progressive experience, the degree must be a single U.S. Bachelor's degree or a single foreign equivalent degree. The legislative history of the Immigration Act of 1990, Pub. L. 101-649 (1990), indicates that a beneficiary seeking qualification based on the equivalent of an advanced degree "must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 101-955, 1990 WL 201613, *6786 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6784.

In response to criticism that the proposed regulations at 8 C.F.R. § 204.5 do not allow experience to substitute for education, the former Immigration and Naturalization Service stated that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added); *see also SnapNames.com, Inc. v. Chertoff*, No. CV-06-65-MO, 2006 WL 3491005, **10-11 (D. Or. Nov. 30, 2006) (holding that U.S. Citizenship and Immigration Services (USCIS) properly requires single baccalaureate degrees or foreign equivalent degrees in petitions for advanced degree professionals and professionals based on its interpretation of the Act).³

² The instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1), allow the submission of additional evidence on appeal. The instant record provides no reason to preclude consideration of any documents newly submitted on appeal.

³ The Petitioner notes that [REDACTED] lacks precedential value. *See Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993) (holding that a U.S. District Court decision is not binding, even in other cases in that district). Also, as the

(b)(6)

Matter of P-, Inc.

Therefore, to qualify for the requested classification based on the equivalent of an advanced degree, a beneficiary must have a single degree that is either a U.S. Bachelor's degree or a foreign equivalent degree.

In addition, the degree of an advanced degree professional must be from a college or university. As previously indicated, a petition for an advanced degree professional based on the equivalent of an advanced degree must be accompanied by "an official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(B). Similarly, a petition for a professional requires submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." 8 C.F.R. § 204.5(l)(3)(ii)(C).

Comments to the proposed regulations for advanced degree professionals state that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." 56 Fed. Reg. 30703, 30706 (July 5, 1991) (emphasis added). The regulations also use different language when referring to requirements other than a single Bachelor's degree. See 8 C.F.R. § 204.5(k)(3)(ii)(A) (requiring petitions for aliens of exceptional ability to include "an 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 relating to the area of exceptional ability"). See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (stating that, where particular language is included in one section of an act but omitted in another, courts presume the disparate inclusion or exclusion was intentional). Thus, the Act and the regulations indicate that an advanced degree professional must possess, at a minimum, a college or university degree that is either a U.S. baccalaureate degree or a foreign equivalent degree.

The job offer portion of an accompanying labor certification must also require an advanced degree professional. 8 C.F.R. § 204.5(k)(4)(i). When examining a job offer portion of a labor certification, we may neither ignore a term, nor impose additional requirements. See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

In the instant case, the accompanying labor certification states the minimum requirements of the offered position of director of quality assurance as a Master's degree or a foreign equivalent degree in chemistry or biology, plus at least 36 months of experience in the job offered or a related position. The labor certification also indicates the Petitioner's acceptance of a Bachelor's degree followed by five years of progressive experience in the specialty.

Petitioner argues, the Director's July 1, 2014, decision mistakenly states that [REDACTED] involved membership in a [REDACTED]. However, we find the [REDACTED] decision to be relevant and persuasive in the instant case. Also, the record indicates that the Director's error did not negate the reasoning of his decision or otherwise prejudice the Petitioner.

(b)(6)

Matter of P-, Inc.

Specifically, Part H.8-A of the ETA Form 9089 indicates the Petitioner's alternative acceptance of a "Bachelor's" degree (plus five years of experience). The Petitioner did not indicate its acceptance of an "Other" type of educational credential. Because the offered position requires either a Master's degree (or a foreign equivalent degree) or a Bachelor's degree (or a foreign equivalent degree) plus five years of experience, the position requires, at a minimum, the services of an advanced degree professional.

II. THE BENEFICIARY'S EDUCATIONAL QUALIFICATIONS

The Beneficiary attested on the labor certification to his receipt of a 1983 Bachelor's degree in chemistry from the [REDACTED] in Ireland. However, the record does not contain a copy of a Bachelor's degree or any other academic records from the [REDACTED]. Rather, the Petitioner asserts that the Beneficiary's [REDACTED] graduate certificate establishes his educational qualifications for the offered position and the requested classification.

The [REDACTED] certificate states the Beneficiary's election and admittance as a graduate of the [REDACTED] on December 19, 1983. A copy of a September 16, 1996, letter from an [REDACTED] secretary states the Beneficiary's passage of Part II of the organization's graduateship examination in 1983 "following successful completion of the required course of study at: [REDACTED]. The letter states: "All graduates who obtain a good honours (1st or 2nd class) UK/Irish degree accredited by The [REDACTED] or who pass the [REDACTED] Part II examination are eligible to become Graduate members of the Society and to use the designatory letters [REDACTED] after their name."⁴

The record also includes a copy of a November 1973 graduateship study guide. The guide contains a program of courses, designed to total at least 1,200 hours, that purportedly leads to graduateship of the [REDACTED].

The Petitioner also submitted two evaluations of the Beneficiary's foreign educational credentials. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (stating that we may treat expert

⁴ Although not stated on the labor certification, the record indicates the Beneficiary's acquisition of membership in the [REDACTED] on September 8, 1989, receiving authorization to use the title Chartered Chemist (CChem). The record also indicates the Beneficiary's receipt of a two-year diploma in pharmaceutical manufacturing technology from [REDACTED] of the [REDACTED] in Ireland on February 19, 1999. The Petitioner does not argue that the Beneficiary's [REDACTED] status or college diploma qualifies him for the offered position or requested classification.

⁵ Online records identify the [REDACTED] as one of four organizations that merged to form the [REDACTED] in 1980. [REDACTED] (accessed June 18, 2015). [REDACTED] status, which the [REDACTED] awarded from 1981 to 1995, replaced the [REDACTED] status issued by the [REDACTED].

[REDACTED] (accessed June 19, 2015); *see also* British Qualifications, (Kogan Page 6th ed. 1975) (stating that the former [REDACTED] status was "an academic qualification equivalent to a good honours degree in Chemistry"). "The [REDACTED] no longer offers its own examinations for direct admission to membership." British Qualifications, 504 (Kogan Page 36th ed. 2006), *available at* [REDACTED] (accessed June 18, 2015). "Instead it recognizes and accredits degree courses offered by universities." *Id.*

(b)(6)

Matter of P-, Inc.

testimony as an advisory opinion, or disregard or afford less weight to it if it is inconsistent with other evidence or is questionable in any way).

A January 18, 2002 evaluation by [REDACTED] of [REDACTED] states the Beneficiary's completion of a "four year program, set at bachelor's degree level" at the [REDACTED] and his earning of [REDACTED] status after passing Part II of the graduateship exam. The evaluation also states the Beneficiary's acquisition of [REDACTED] status in 1989. The evaluation concludes that "[t]hese studies are equivalent in level and purpose to a Bachelor of Science in Chemistry awarded by regionally accredited colleges and universities in the United States."

The Petitioner's motion to reopen also included an "Expanded Academic Evaluation Report" by [REDACTED] of [REDACTED], dated May 1, 2014. This evaluation states that the Beneficiary's studies at [REDACTED] were "on par with an Honours degree in Inorganic, Organic and Physical Chemistry" and that his [REDACTED] certificate equates to a four-year, U.S. Bachelor of Science degree in chemistry. The evaluation also interprets the prior evaluation as concluding that the Beneficiary's [REDACTED] - alone and not in combination with other credentials - equated to a U.S. Bachelor's degree.

Based on the evidence above, the Petitioner argues that the Beneficiary completed four years of university-level studies at the [REDACTED]. It asserts that the [REDACTED] certificate awarded thereafter constitutes the foreign equivalent of a U.S. Bachelor's degree in chemistry.

We agree that the Beneficiary's [REDACTED] certificate appears to be comparable to a U.S. Bachelor's degree in chemistry. *See also* British Qualifications at 504 (Kogan Page 36th ed. 2006 (stating that the [REDACTED] qualification is "equivalent to a chemistry degree"). However, the issue is whether the Beneficiary's [REDACTED] certificate constitutes a single foreign equivalent degree from a college or university pursuant to the Act and the regulations.

In similar non-precedent cases, we have held that, while professional certificates and memberships may equate to U.S. Bachelor's degrees, they do not constitute single foreign degrees from colleges or universities pursuant to the Act and regulations. *See Matter of [Redacted]*, 2013 WL 8117684 (AAO Dec. 6, 2013) (holding that a final examination certificate from the [REDACTED] following a three-year Bachelor of Commerce degree does not constitute a single foreign equivalent degree from a college or university); *Matter of [Redacted]*, 2013 WL 5296550 (AAO Jan. 14, 2013) (holding that membership in the Associateship of the [REDACTED] following a three-year foreign Bachelor's degree does not constitute a single foreign equivalent degree from a college or university).

Unlike the cases cited above, the education evaluations in the instant case assert the Beneficiary's completion of four years, not three, of university studies before receiving his professional certificate. However, the record does not contain documentary evidence corroborating those assertions. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citation omitted) (stating that uncorroborated assertions are insufficient to meet the burden of proof in visa petition proceedings);

(b)(6)

Matter of P-, Inc.

see also Caron, 19 I&N Dec. at 795 (stating that we may disregard or afford less weight to expert opinions unsupported or inconsistent with the record).⁶

The September 16, 1996, letter from the [REDACTED] secretary states the Beneficiary's completion of "the required course of study" at the [REDACTED]. However, the letter does not state the duration of the course of study or the institute's issuance of a Bachelor's degree to the Beneficiary. Indeed, the letter indicates that the Beneficiary's [REDACTED] status did not require a Bachelor's degree. ("All graduates who obtain a good honours (1st or 2nd class) UK/Irish degree accredited by [REDACTED] or who pass the [REDACTED] Part II examination are eligible to become Graduate members of the Society") (emphasis added). The letter states the Beneficiary's passage of the [REDACTED] Part II examination, not his acquisition of a Bachelor's degree (Honours). The record does not explain whether the Beneficiary, based on his studies, could have obtained a Bachelor's degree (Honours) in chemistry from the [REDACTED].

The Petitioner argues that, unlike in other cases involving professional certificates or memberships, the Beneficiary completed coursework at a recognized institution of higher education. It also argues that the professional organization that issued the Beneficiary's certificate oversaw his curriculum.

If [REDACTED] oversaw the Beneficiary's curriculum at the [REDACTED], the Beneficiary's [REDACTED] certification may represent a single, integrated academic credential, rather than a combination of academic and professional credentials. However, the record does not establish [REDACTED] involvement in the Beneficiary's curriculum, nor does it establish the [REDACTED] as a degree-granting institution.

The graduateship study guide is dated November 1973, before the start of the Beneficiary's claimed studies at the [REDACTED]. Also, the guide indicates its issuance by the [REDACTED] an organization that online records indicate no longer existed when the Beneficiary received his [REDACTED] certificate.⁷ As previously indicated, the September 16, 1996, letter from the [REDACTED] secretary indicates the Beneficiary's completion of "the required course of study" at the [REDACTED]. However, the letter does not state that the [REDACTED] oversaw the Beneficiary's curriculum at the [REDACTED].

Even assuming the [REDACTED] control of the Beneficiary's curriculum and the [REDACTED] certificate's representation of a single academic credential equivalent to a U.S. Bachelor's degree, the record does not establish the credential's issuance by a college or university. The [REDACTED] authorizes the organization to examine applicants for admission, to organize other examinations, and to issue "formal documents certifying competency in chemistry." *See* [REDACTED], Charter & By-laws, No. 11, at [REDACTED] (accessed June 18, 2015). However, the charter does not specifically authorize [REDACTED] to issue academic degrees.

⁶ The May 1, 2014, evaluation also asserts without citation to authority or evidence that "the [REDACTED] is recognized by British universities as equivalent to an Honours Degree and sufficient for admission to postgraduate [post-bachelor's] studies."

⁷ The May 1, 2014, education evaluation misattributes the graduateship study guide to the [REDACTED] rather than the [REDACTED].

(b)(6)

Matter of P-, Inc.

For the foregoing reasons, the record does not establish the Beneficiary's possession of a single foreign equivalent degree from a college or university.

III. CONCLUSION

The record does not establish the Beneficiary's possession of the equivalent of an advanced degree as required by the terms of the accompanying labor certification and the requested preference classification. The record indicates the equivalency of the Beneficiary's [REDACTED] certificate to a U.S. Bachelor's degree in chemistry. However, the record does not establish his possession of a single U.S. Bachelor's degree or a single foreign equivalent degree from a college or university pursuant to the Act and the regulations. Thus, the Beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act. We will therefore affirm the Director's decision.

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternate basis for the petition's denial. In visa petition proceedings, a petitioner bears the burden of establishing eligibility for the benefit sought. INA § 291, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of P-, Inc.*, ID# 12043 (AAO Oct. 13, 2015)