



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

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

MATTER OF M- CORP.

DATE: JUNE 13, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of software development and support services, seeks to permanently employ the Beneficiary as a lead information systems analyst-4. It seeks 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)(A), 8 U.S.C. § 1153(b)(2)(A). This classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Texas Service Center, denied the petition on August 3, 2015. The Director concluded that the accompanying ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL), did not demonstrate that the job requires a professional with an advanced degree or its equivalent.

The matter is now before us on appeal. The Petitioner asserts that the Director misinterpreted the job requirements stated on the accompanying labor certification. Upon *de novo* review, we will dismiss the appeal.

## I. LAW AND ANALYSIS

### A. The Roles of DOL and USCIS in the Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, an employer must obtain 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). Next, the employer files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If the Form I-140 is approved, the foreign national then applies 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.

By approving the accompanying labor certification in the instant case, DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position. Section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the employment of a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Section 212(a)(5)(A)(i)(II).

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In visa petition proceedings, USCIS determines whether a foreign national meets the job requirements specified on a labor certification and the requirements of the requested immigrant classification. *See* section 204(b) of the Act (stating that USCIS must approve a petition if the facts stated in it are true and the foreign national is eligible for the requested preference classification); *see also, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service has authority to make preference classification decisions); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (same).

B. The Requirements for an Advanced Degree Professional

A petition for an advanced degree professional must be accompanied by a valid, individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). The job offer portion of a labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent. *Id.*

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).

The regulation at 8 C.F.R. § 204.5(k)(2) uses the term "degree," indicating that a professional with the equivalent of an advanced degree must possess a single U.S. bachelor's degree or foreign equivalent degree, without combining experience or lesser educational degrees. *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (allowing "a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning" to demonstrate qualifications as an "alien of exceptional ability").

Legislative history also reflects the Congress' intention to require a single, uncombined bachelor's degree for advanced degree professional purposes. In "considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 101-955 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6784, 6786. The former Immigration and Naturalization Service, now USCIS, found 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." Final Rule for Immigrant Visa Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991); *see also SnapNames.com, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, \*\*10-11 (D. Or. Nov. 30, 2006) (upholding our determination that beneficiaries of immigrant visa petitions seeking classification as professionals or advanced degree professionals are statutorily required to hold at least a single baccalaureate degree).

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Therefore, in the instant case, the job offer portion of the labor certification must demonstrate that the job opportunity requires, at a minimum, a single U.S. bachelor's or foreign equivalent degree, followed by 5 years of progressive experience in the specialty.

### C. The Requirements Stated on the Accompanying Labor Certification

We must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany*, at 1012-13; *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 primary requirements of the offered position of lead information systems analyst-4 as a U.S. master's degree or foreign equivalent degree in computer science, computer application, computer engineering, computer information systems, electronic engineering, electrical engineering, engineering, or a related field, plus 24 months of experience in the job offered or as a project lead, software engineer, or related occupation. The labor certification also states that the Petitioner will accept an alternate combination of education and experience in the form of a bachelor's degree plus 5 years of experience.

However, Part H.14. of the ETA Form 9089, which lists "[s]pecific skills or other requirements," states:

Any suitable combination of education and experience is acceptable such as a Bachelor's degree or foreign equivalent plus five years of progressive experience, OR Master's degree or foreign equivalent plus two years of experience. Will accept a bachelor's equivalent based on a combination of degrees as determined by a qualified evaluation service.

We will accept experience in related job with similar job duties but given another designation or related occupation.

Travel to unanticipated client/work sites and/or relocate throughout the U.S.

As indicated by the Director, Part H.14. of the underlying labor certification reflects the Petitioner's acceptance of a bachelor's degree equivalency "based on a combination of degrees." However, as previously discussed, regulation and legislative history indicate that an advanced degree professional must, at a minimum, possess a single U.S. bachelor's or foreign equivalent degree that has been issued by a college or university. By allowing for a bachelor's degree equivalency based on a combination of degrees, the labor certification does not demonstrate that the offered position requires a professional holding an advanced degree or its equivalent.

The Petitioner asserts that we misinterpret its requirements on the labor certification. The Petitioner states that the ETA Form 9089 clearly indicates that the offered position requires at least a bachelor's

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degree or a foreign equivalent degree, followed by 5 years of progressive experience in the specialty. It maintains that the language in Part H.14. of the form was “never intended to deviate or reduce the primary or secondary job requirements” for the offered position, but should, pursuant to the decision in *Matter of General Electric Co.*, 2011-PER-02696 (BALCA, Jan. 22, 2013), be read as clarifying rather than contradicting the information provided in the “checkbox format” of Section H. The Petitioner states that “[i]t is our position that notwithstanding the language listed on ETA-9089, item H.14, there is only the primary requirement (H.4) and alternative requirement (H.8).”

However, as previously discussed, we may not disregard terms of a labor certification. *See, e.g., Madany*, at 1015 (stating that “it is the language of the labor certification job requirements that will set the bounds of the . . . burden of proof”). We must therefore consider the plain language in Part H.14. of the ETA Form 9089 when determining the minimum job requirements of the offered position. Although Part H.8-A of the form states the educational requirement as a bachelor’s degree, Part H.14. indicates that this requirement may be met through a “combination of degrees.”

The Petitioner also asserts that its requirements for the offered position are clearly reflected in the recruitment materials it submitted for the record, including copies of an online job order with the [REDACTED] its internal posting notice for the position; and advertisements for the position (and other job openings) from [REDACTED] and [REDACTED]. However, we find the submitted documentation is insufficient to establish the offered position’s minimum job requirements. Although the online job notice and the posting notice reflect that the Petitioner will accept a “Bachelor’s degree or foreign equivalent, plus five years of progressive experience,” the advertisements in [REDACTED] do not identify the nature of the equivalency but indicate only that the Petitioner will accept a “Bach/equiv+ 5yr progressive exp.” In that the record does not contain the Petitioner’s recruitment report or the resumés submitted by applicants for the offered position, we cannot conclude that the Petitioner’s minimum educational requirement in recruiting for the offered position was a single U.S. bachelor’s or a foreign equivalent degree.

For the foregoing reasons, the job offer portion of the accompanying labor certification does not demonstrate that the offered position requires a professional holding an advanced degree or its equivalent.

## II. CONCLUSION

The job offer portion of the accompanying labor certification does not demonstrate that the offered position requires a professional holding an advanced degree or its equivalent. We will therefore affirm the Director’s decision in this matter and dismiss the appeal.

In visa petition proceedings, a petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the instant Petitioner did not meet that burden.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of M- Corp.*, ID# 16866 (AAO June 13, 2016)