



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

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

MATTER OF S-P-I, INC.

DATE: JUNE 27, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer and distributor of generic pharmaceuticals, seeks to employ the Beneficiary as a supervisor-analytical R&D. 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, Nebraska Service Center, denied the petition. The Director determined that the job offered required less than an advanced degree. Specifically, the Director found that, because the Petitioner would accept a combination of degrees including a 3-year bachelor's degree, the minimum requirements for the position were less than an advanced degree.

The matter is now before us on appeal. The Petitioner asserts that the minimum requirement of the proffered job is an advanced degree because there are some countries from which 3-year degrees may be combined with other degrees to be the equivalent of an advanced degree. Upon *de novo* review, we will dismiss the appeal.

#### I. LAW AND ANALYSIS

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, U.S. Citizenship and Immigration Services (USCIS) must approve an immigrant visa petition. *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, the foreign national must 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.

As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the DOL, accompanies the instant petition. By approving the labor certification, the 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) of the Act.

In these 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); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (both holding that the immigration service has authority to make preference classification decisions).

The priority date of this petition, which is the date the DOL accepted the labor certification for processing, is March 20, 2015.<sup>1</sup> *See* 8 C.F.R. § 204.5(d).

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

- H.4. Education: Bachelor's degree in chemistry, pharmacy, pharmaceutical science or foreign equivalent.
- ...
- H.6. Experience in the job offered: None required.
- ...
- H.8. Alternate combination of education and experience: Other: 3 year bachelor's degree or 2 year master degree or combination evaluated as equivalent to at least a U.S. bachelor's degree.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 60 months as a lab assistant QC, officer-QC, Sr. officer-QC, research scientist or combination thereof.
- H.14. Specific skills or other requirements: Bachelor's degree in chemistry, pharmacy, pharmaceutical science or foreign equivalent and five years of progressive, post-baccalaureate experience in the position of lab assistant QC, officer-QC, Sr. officer-QC, research scientist or combination thereof. Alternatively, will accept either a foreign three year bachelor degree or a two year master degree or combination evaluated as equivalent to at least a U.S. bachelor's degree. Any suitable combination of education, training, and experience evaluated as equivalent to at least a U.S. bachelor's degree all acceptable. Experience must include three years in pharmaceutical industry performing development and validation of analytical procedures for different dosage forms, analytical testing of raw material and finished product, and use of sophisticated instruments such as HPLC, UV, FTIR, dissolution apparatus for raw material and finished product.

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<sup>1</sup> The priority date is used to calculate when the beneficiary of the visa petition is eligible to adjust his or her status to that of a lawful permanent resident. *See* 8 C.F.R. § 245.1(g).

A. Classification as an Advanced Degree Professional

Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: “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.” *Id.* The regulation at 8 C.F.R. § 204.5(k)(4) states in pertinent part that “[t]he job offer portion of an individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability.”

The regulations use of the term “degree,” indicates 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. 8 C.F.R. § 204.5(k)(2); *Compare* 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 supports Congressional 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. Legacy Immigration and Naturalization Service (legacy INS) 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, at 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).

Thus, in the instant case, the job offer portion of the accompanying labor certification must demonstrate that the job requires a single U.S. bachelor’s degree or foreign equivalent degree, without combining experience or lesser educational degrees, followed by 5 years of progressive experience in the specialty.

Part H.8-C of the labor certification indicates that the Petitioner will accept “Other: 3 year bachelor’s degree or 2 year master degree or combination evaluated as equivalent to at least a U.S. bachelor’s degree.” As previously discussed, the regulations and legislative history indicate that an advanced degree professional must possess a single U.S. bachelor’s degree or foreign equivalent degree without combining experience or lesser educational degrees. By stating that it would accept a 3-year

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bachelor's degree "evaluated as equivalent to at least a U.S. bachelor's degree," the Petitioner indicated that it would accept less than a full U.S. baccalaureate or foreign equivalent degree. See *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). While the Petitioner contends that *Matter of Shah* is not applicable in this case because the instant Beneficiary possesses the requisite qualifications for the position, *Matter of Shah* stands as precedent that a 3-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. The plain language of the labor certification allows for a degree that is not a foreign equivalent degree to a U.S. bachelor's degree.

The Petitioner asserts that, because there are foreign 3-year degrees that are equivalent to a U.S. baccalaureate, such as those from the United Kingdom, Israel, Canada, and India in certain cases, the labor certification's requirements do not necessarily preclude equivalency to a U.S. bachelor's degree. The Petitioner submits a December 15, 2015, opinion letter from [REDACTED] in support of this assertion. The [REDACTED] letter states that a 3-year degree from India would be evaluated as equivalent to a U.S. bachelor's degree if the degree was earned in Division or Class I or II and the degree had been issued by a university accredited by the National Assessment and Accreditation Council with a grade of A. Citing [REDACTED] of the *Three-Year Bachelor's Degree from India*, [REDACTED] June 10, 2014. The [REDACTED] letter does not indicate that all 3-year degrees, or a combination of a 3-year degree and other degrees as allowed by the labor certification, may be evaluated to be equivalent to a U.S. bachelor's degree.

Further, the [REDACTED] evaluation presents its policy with respect to 3-year bachelor's degrees in India based on two studies it conducted of the Indian educational system. [REDACTED] recognizes 3-year bachelor's degrees in India as equivalent to U.S. bachelor's degrees when two conditions are met: (1) the degrees were earned in "Division 1" and (2) the awarding institutions have been accredited by India's National Assessment and Accreditation Council (NAAC) with a grade of "A" or better. The [REDACTED] evaluation has little utility in the instant proceeding. It does not define the terms "Division 1" and "a grade of A." So it is impossible from the report itself to determine what distinguishes a 3-year Indian degree that [REDACTED] considers equivalent to a U.S. bachelor's degree from a 3-year Indian degree that it does not consider equivalent to a U.S. bachelor's degree.

Evaluations of academic and other credentials by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, we determine that the [REDACTED] and [REDACTED] evaluations have little probative value. They are not persuasive evidence that some 3-year bachelor's degrees in India are equivalent to U.S. bachelor's degrees.

Moreover, section H.14 of the labor certification also indicates that "[a]ny suitable combination of education, training, and experience evaluated as equivalent to at least a U.S. bachelor's degree [are] all acceptable" to the Petitioner. This language suggests that the Petitioner would accept a combination of lesser degrees and/or work experience, the result of which is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional. The job offer portion of the labor certification therefore does not

demonstrate that the offered position requires a professional holding an advanced degree or the equivalent.

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification. We must therefore consider the language in Part H.14 of the ETA Form 9089 when determining the minimum job requirements of the offered position. Although Parts H.4 and H.9 of the form state that a bachelor's degree or a foreign educational equivalent is required, Parts H.8-C and H.14 indicate that the equivalency of a bachelor's degree can include "3 year bachelor's degree or 2 year master degree or combination evaluated as equivalent to at least a U.S. bachelor's degree" or "[a]ny suitable combination of education, training, and experience evaluated as equivalent to at least a U.S. bachelor's degree."

In the instant case, the plain language of the labor certification is that the Petitioner would accept a combination of educational credentials and/or experience less than a U.S. bachelor's degree or foreign equivalent degree. As such, the minimum requirements of the labor certification are less than those required for the advanced degree professional category.

#### B. The Beneficiary's Experience

Although not addressed by the Director, we independently note that, even if the Petitioner had established that the minimum requirements of the labor certification were an advanced degree, the record does not establish that the Beneficiary possesses the required experience.

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); see also *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a beneficiary must have at least five years of progressive post-baccalaureate experience in the specialty in order to qualify as an advanced degree professional.

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The record contains a copy of the Beneficiary's master of science in chemistry provisional certificate and statement of marks from [REDACTED] India, issued on April 12, 2007, which is comparable to a bachelor's degree in the United States.

The record contains evidence demonstrating that the Beneficiary gained less than a year of progressive, post-baccalaureate experience in the specialty as a research scientist with [REDACTED] New Jersey, from April 12, 2007 to November 30, 2007, and a research scientist with [REDACTED] New Jersey, from December 5, 2007 to March 21, 2008. The labor certification lists experience the Beneficiary gained as a lab assistant, officer-QC, senior officer-QC, and research scientist, prior to April 12, 2007. However, the Beneficiary's experience prior to attainment of his master's degree cannot be used to meet the 5 years of post-baccalaureate experience.

Accordingly, the submitted experience letters do not establish that the Beneficiary possessed 5 years of post-baccalaureate experience in the specialty.

## II. CONCLUSION

In summary, 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. The Director's decision denying the petition is affirmed. The record also does not establish the Beneficiary's possession of five years of post-baccalaureate experience by the petition's priority date or the Petitioner's ability to pay the proffered wage from the priority date onwards.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *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 S-P-I, Inc.*, ID# 17400 (AAO June 27, 2016)