



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

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

MATTER OF A-E-, INC.

DATE: JULY 27, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of electronic, semiconductor, and computer components, seeks to employ the Beneficiary as a database administrator. It requests his classification as a member of the professions holding an advanced degree under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows U.S. businesses to sponsor foreign nationals for lawful permanent resident status if they have master’s degrees, or bachelor’s degrees followed by five years of experience.

The Director of the Nebraska Service Center denied the petition. The Director concluded that, contrary to the requirements of the offered position and the requested classification, the record did not establish the Beneficiary’s possession of at least five years of post-baccalaureate experience.

On appeal, the Petitioner submits additional evidence and asserts the Director’s miscalculation of the Beneficiary’s post-degree experience. The Petitioner contends that the Director should have measured the Beneficiary’s experience from the date he passed the final degree examination, rather than from the later date on which a university issued his diploma.

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

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer files a labor certification application with 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). DOL must certify that the United States lacks enough able, willing, qualified, and available workers for an offered position, and that a foreign national’s permanent employment will not harm the wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i)(I)-(II) of the Act. If DOL certifies a position, the employer must then file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, 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.

A petitioner for an advanced degree professional must establish a beneficiary's possession of an "advanced degree." 8 C.F.R. § 204.5(k)(1). This term means "[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." 8 C.F.R. § 204.5(k)(2).

To demonstrate a beneficiary's possession of a bachelor's degree followed by the requisite five years of experience, a petitioner must provide "an official academic record" of the degree and letters from current or former employers describing the experience. 8 C.F.R. § 204.5(k)(3)(i)(B).¹ A petitioner must also establish a beneficiary's possession of all DOL-certified job requirements by a petition's priority date.² See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

The labor certification here states the minimum requirements of the offered position of database administrator as a bachelor's degree followed by five years of experience. The record establishes the Beneficiary's possession of an Indian master's degree that equates to a U.S. bachelor's degree in a required field of study. The Petitioner also documented the Beneficiary's possession of about seven years of progressive experience in the specialty, from August 2005 to August 2012.³

The Director, however, found that the Beneficiary's post-baccalaureate experience did not begin until March 1, 2009. Noting the February 29, 2009, date on the Beneficiary's graduate diploma and realizing that 2009 did not contain a 29th day of February, the Director presumed the Beneficiary's receipt of the diploma on the following day: March 1, 2009. The Director therefore concluded that the Beneficiary's experience from the diploma's issuance in March 2009 until August 2012 did not meet the five-year amount required for the offered position and the requested classification.

¹ The Petitioner asserts that evidence other than official academic records may establish the educational qualifications of an advanced degree professional. See 8 C.F.R. § 204.5(k)(3)(iii) (providing: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility"). That regulation, however, applies not to advanced degree professionals, but to another EB-2 category: aliens of exceptional ability. The regulation references standards of exceptional ability in the immediately preceding regulation at 8 C.F.R. § 204.5(k)(3)(ii). See Final Rule for Employment-Based Immigrants, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (adding the regulation at 8 C.F.R. § 204.5(k)(3)(iii) "to permit those who believe the established criteria do not readily apply to their occupation to submit comparable evidence of exceptional ability") (emphasis added).

² This petition's priority date is October 21, 2013, the date DOL accepted the labor certification application for processing. See 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

³ Labor certification employers generally cannot rely on experience that a foreign national gained with it. The record, however, establishes the Beneficiary's possession of four years of qualifying experience with the Petitioner while working in temporary visa status. See 20 C.F.R. §§ 656.17(i)(3)(i), (5)(ii) (allowing experience with an employer if gained in a position substantially different than the offered position).

On appeal, the Petitioner asserts the Beneficiary's completion of the degree's requirements in February 2007, when he passed a final examination. The Petitioner therefore argues that the Beneficiary gained more than five years of post-baccalaureate experience, from February 2007 to August 2012.

As proof of the Beneficiary's attainment of the degree in February 2007, the Petitioner cites his university diploma and marks memoranda. The diploma states the degree's award to the Beneficiary, "having attended the two years course and passed the examination in the year 2007 from this university." Similarly, a marks memo of the Beneficiary's last semester states his examination, after two years of coursework, in "Jan.Feb.2007."

Because the Beneficiary's diploma stated a fictitious date, USCIS contacted the issuing university to confirm the document's authenticity. In a letter to a USCIS officer in India, a university registrar acknowledged the diploma's erroneous date, but confirmed the school's issuance of the document on March 7, 2008. The registrar's letter also states that the Beneficiary "passed [the] Master of Science . . . in the year 2007."

The statute and regulations governing the EB-2 classification use the terms "degree" and "official academic record," not "diploma." 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.⁴ 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.⁵

Here, the Petitioner did not submit an official academic record demonstrating the Beneficiary's completion of all substantive degree requirements and the university's approval of the degree before March 7, 2008. When determining whether a document is an official academic record that

⁴ 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 July 10, 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).

⁵ 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).

substantiates a claimed degree, we may consider whether the document was issued by a university in the normal course of its business; whether the document was issued contemporaneous with events; and whether the document indicates that all degree requirements, not just the required coursework, have been completed.⁶

The Petitioner did not establish the registrar's letter as an official academic record substantiating that the claimed degree was awarded prior to the diploma date. The letter, written eight years after the Beneficiary's purported completion of the degree, merely corrects the erroneous diploma date and was issued in response to a USCIS inquiry, not in the university's normal course of business. Further, the letter states only that the Beneficiary "passed" the master of science in 2007; it does not state that all degree requirements were completed. It also does not reflect the university's approval of the degree before March 7, 2008. Therefore, the letter does not demonstrate the Beneficiary's completion of all substantive degree requirements and the university's approval of the degree as of the 2007 exam date.

In addition, although a university-issued statement of marks is an official academic record, the Beneficiary's marks statement alone does not demonstrate the Beneficiary's completion of the degree requirements in 2007. The Beneficiary's marks statement simply confirms that he took the final examinations for his degree in January or February 2007.

As additional proof that the Beneficiary's degree preceded the diploma's issuance, the Petitioner cites an evaluation of his educational credentials. The evaluation states that, because of delays in administrative processing, Indian universities commonly issue diplomas "significantly later" than the completion dates of the underlying degrees. Thus, the evaluation asserts that the dates on which Indian students complete their studies, as reflected on their marks memoranda, best establish the dates of their degrees. As we held in *Matter of O-A-*, however, to establish a degree's precession of a diploma, a petitioner must provide "case-specific" evidence of a beneficiary's prior completion of all degree requirements and the issuing school's approval of the degree, documented by an official academic record. *Matter of O-A-*, at *3. Here, as previously discussed, the Petitioner has not established the occurrence of those events before the issuance of the Beneficiary's diploma in March 2008.

The Petitioner also submits a report from the Electronic Database for Global Education (EDGE), an online resource that federal courts have found to provide reliable, peer-reviewed information about

⁶ 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 July 10, 2017).

foreign educational equivalencies.⁷ EDGE reports that an Indian provisional degree certificate “provides evidence of completion of all requirements for the degree in question.” We are familiar with the EDGE report, as we cited it in *Matter of O-A-* to support our holding that a provisional certificate may establish a degree’s attainment. The Petitioner, however, has not submitted a provisional certificate. The EDGE report therefore does not support the Petitioner’s argument in this matter.

The Petitioner has not established that the Beneficiary completed all substantive requirements to earn his degree and that the university approved his degree at any time prior to March 2008. For this reason, we find that the Beneficiary did not have a minimum of five years of qualifying post-baccalaureate employment experience.

III. CONCLUSION

Contrary to the requirements of the offered position and the requested classification, the record does not establish the Beneficiary’s possession of at least five years of post-baccalaureate experience. We will therefore affirm the Director’s decision.

ORDER: The appeal is dismissed.

Cite as *Matter of A-E-, Inc.*, ID# 91007 (AAO July 27, 2017)

⁷ EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See AACRAO, at <http://www.aacrao.org/About-AACRAO.aspx> (last visited July 10, 2017); see also, e.g., *Viraj, LLC v. U.S. Att’y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as “a respected source of information”).