



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF A-C- LLC

DATE: APR. 13, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electronic commerce company, seeks to employ the Beneficiary as a senior project manager. 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 EB-2 employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Acting Director of the Nebraska Service Center denied the petition and a subsequent motion, concluding that the labor certification did not require a professional holding an advanced degree or the equivalent. On appeal, the Petitioner asserts that the terms of the labor certification require a professional holding an advanced degree.

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

In order to be eligible for EB-2 classification, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent. 8 C.F.R. § 204.5(k)(4)(i). The regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as a master’s degree or a bachelor’s degree followed by five years of progressive experience. If the labor certification allows for less than an advanced degree, the position will not qualify for EB-2 classification.

The Director concluded that the terms of the labor certification do not support EB-2 classification because the labor certification stated minimum requirements in part H.14 that are less than an advanced degree. Part H.14 states that the Petitioner is “willing to accept *any suitable combination of education, experience and/or training* that is equivalent to the actual minimum requirements of the position and shows demonstrable ability in the skill sets required for the position.” This language in italics, although in different word order, is known as *Kellogg* language.¹

¹ The Board of Alien Labor Certification Appeals (BALCA) held in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (BALCA Feb. 2, 1998) (en banc), that “where [the beneficiary] does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chosen to list alternative job requirements, the employer’s

We generally do not interpret the *Kellogg* language to mean that the employer would accept lesser qualifications than the stated primary and alternative requirements on the labor certification. Here, although H.14 contains language in addition to the standard *Kellogg* language, we find that the additional language does not add any additional meaning that would allow for anything less than an advanced degree. The language indicates that any suitable combination of education and experience is allowed only if it is equivalent to the actual minimum requirements stated on the labor certification.² Therefore, the position offered meets the minimum requirements for EB-2 classification.

ORDER: The appeal is sustained.

Cite as *Matter of A-C- LLC*, ID# 1179671 (AAO Apr. 13, 2018)

alternative requirements are unlawfully tailored to the [beneficiary's] qualifications ... unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable."

² The actual minimum requirements of the labor certification include a master's degree and 24 months of experience, or a bachelor's degree and five years of experience.