



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

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

MATTER OF W- CORP.

DATE: APR. 19, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a finished carpentry contracting company, seeks to employ the Beneficiary as a management analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. 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 of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward. We affirmed the Director's decision on appeal and also found that the labor certification was not valid for the classification of advanced degree professional and that the evidence of record was insufficient to establish that the Beneficiary had the experience required by the labor certification to qualify for the job offered. The Petitioner then filed a motion to reconsider, which we granted in part and denied in part. We found that the Petitioner had established its continuing ability to pay the proffered wage from the priority date onward, but did not establish that our decision finding that the Beneficiary did not meet the experience requirements of the labor certification and that the labor certification does not support the requested classification of advanced degree professional was based on incorrect applications of law or policy.

The matter is before us again on another motion to reconsider. The Petitioner asserts that we did not apply the correct standard of proof in our adjudication of the previous motion, that its previous motion was one to reopen and reconsider and thus we should have considered the documentary evidence that accompanied it, and that its minimum educational requirement on the labor certification supports the classification request of advanced degree professional.

Upon review of the record, we will deny the motion.

**I. LAW**

As stated in our previous decision, a motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We do not consider

new facts or evidence in a motion to reconsider. A motion to reconsider must also be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

On motion, the Petitioner contends that the updated employment verification letters it submitted with its previous motion should have been considered because it filed a motion to reopen and reconsider, which may be accompanied by documentary evidence as prescribed in the regulation at 8 C.F.R. § 103.5(a)(2). The Petitioner also reiterates its claim that the labor certification supports its classification request because the definition of advanced degree professional in the regulation at 8 C.F.R. § 204.5(k)(2) incorporates at minimum a baccalaureate degree and thus “implicitly confirms that a bachelor’s degree is required.”<sup>1</sup> For the reasons that follow, we do not find the Petitioner’s arguments persuasive.

In our original decision dismissing the appeal we found that the letters from [REDACTED] and [REDACTED] submitted as initial evidence of the Beneficiary’s employment experience, did not meet the substantive requirements of 8 C.F.R. § 204.5(g)(1) because the [REDACTED] letter was not signed by a company official and the [REDACTED] letter did not describe the Beneficiary’s job duties. With its first motion to reconsider the Petitioner submitted updated letters from [REDACTED] and [REDACTED] in the attempt to remedy these deficiencies. However, a motion to reconsider does not allow us to consider new evidence.<sup>2</sup> Since the Petitioner did not establish, or even argue, that our original decision regarding the Beneficiary’s experience was based on an incorrect application of law or policy, we denied the motion to reconsider. The Petitioner’s current motion is also a motion to reconsider. The newly submitted letters would appear relevant to establishing the Beneficiary’s eligibility had they been submitted in the proper venue of a motion to reopen. However, we need not reach this issue as there is another dispositive ground for denial which the Petitioner has not overcome on motion.

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<sup>1</sup> On motion, the Petitioner claims that we did not apply the correct standard of proof, which is preponderance of the evidence, in accordance with our longstanding policy confirmed in *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), and instead raised the evidentiary threshold. The Petitioner asserts that the evidence it submitted should have led us to conclude that its claims were “more likely than not” or “probably true,” thereby satisfying the standard of proof for the approval of the petition in accord with *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989), and *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987). We agree that preponderance of the evidence is the correct standard of proof; however, for the reasons discussed in this decision and in our prior decisions, we do not find that the Petitioner has met its evidentiary burden to establish eligibility for the benefit sought.

<sup>2</sup> Had the Petitioner filed a motion to reopen in addition to, or instead of, a motion to reconsider, we could have considered the updated letters from [REDACTED] and [REDACTED] because 8 C.F.R. § 103.5(A)(2) provides that a motion to reopen must be supported by documentary evidence. The Petitioner’s Form I-290B, Notice of Appeal or Motion, identified the filing as solely a motion to reconsider.

In our prior decisions we found that the labor certification does not support the requested classification of advanced degree professional. As discussed in our previous decision, we must look to the language in the job offer portion of the labor certification to determine the requirements (educational and otherwise) of the proffered position. We may not ignore a term of the labor certification, nor add to its requirements. See *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983). Our interpretation of the job requirements must involve reading and applying the plain language of the labor certification. See *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 834 (D.D.C. 1984). On motion, Petitioner claims that the labor certification supports its classification request of advanced degree professional because, by regulatory definition, an advanced degree professional has at least a baccalaureate degree. However, the definition of advanced degree professional at 8 C.F.R. § 204.5(k)(2) is not a term of the labor certification, and therefore does not add to its requirements (educational or otherwise) for the job. The plain language of the labor certification omits any mention of a bachelor's degree requirement, states that "a master's degree or equivalent" is required, and qualifies the degree requirement by stating that "work experience in lieu of a master's degree" is acceptable. Thus, the plain language of the labor certification makes clear that there is no minimum degree requirement because work experience equivalent to a master's degree is sufficient to meet the educational requirement for the job. Since the labor certification does not require at least a bachelor's degree, it does not support the classification request of advanced degree professional. The Petitioner has not established that our decision on this issue was based on an incorrect application of law or USCIS policy. Nor has it demonstrated eligibility for the benefit sought.

Based on the foregoing discussion, we conclude that the Petitioner has not overcome the bases for the denial of its previous motion. The Petitioner has not established, by a preponderance of the evidence, that its petition meets the requirements for approval.

### III. CONCLUSION

The Petitioner has not demonstrated that our previous decision was based on an incorrect application of law or policy, nor established eligibility for the benefit sought.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of W- Corp.*, ID# 1045792 (AAO Apr. 19, 2018)