



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

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

MATTER OF B-C-A-B-S-O-M-

DATE: OCT. 9, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a [REDACTED] seeks to employ the Beneficiary as an Application Delivery Lead Sr. 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary has the requisite educational degree to qualify for the job offered under the terms of the labor certification or to qualify for classification as an advanced degree professional. On appeal, the Petitioner asserts that the Director's decision was erroneous and that the Beneficiary has the requisite educational credentials to meet the requirements of the labor certification and to qualify for classification as an advanced degree professional.

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

I. LAW

A. The Employment-Based Immigration Process

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).¹ See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition,

¹ The date the labor certification is filed is called the "priority date." See 8 C.F.R. § 204.5(d). The priority date in this case is October 19, 2017.

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.

B. Advanced Degree Classification

Under section 203(b)(2) of the Act, immigrant classification may be granted to foreign nationals who hold advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The term “advanced degree” is defined in 8 C.F.R. § 204.5(k)(2) as follows:

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.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A beneficiary must also meet all of the education, training, experience, and other requirements specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12); *see Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

II. ANALYSIS

Section H of the labor certification states that the offered position of application delivery lead sr. has the following minimum requirements:

- H.4. Education: Bachelor’s degree in computer science, information systems, engineering or related field.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: Field related to computer science, information systems, or engineering.
- H.8. Alternate combination of education and experience accepted? No.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 60 months in application delivery, software engineer, computer systems analyst, or related.

At Part H.14 of the labor certification, the Petitioner clarified that the minimum educational and experience requirements for the job are a bachelor's degree or equivalent in computer science, information systems, engineering or a related field followed by five years of experience in multiple IT capabilities and technologies. It further stated that "[e]quivalent means will accept a foreign degree, diploma, or associate membership examination deemed equivalent to a bachelor's degree by a qualified credential evaluator."

Section J of the labor certification indicates that the Beneficiary was awarded a bachelor's degree in engineering from the [redacted] (India) [redacted] in 2003. As evidence of the Beneficiary's credentials, the Petitioner submitted his certificate of membership in the [redacted] which he earned upon passing Section A and Section B of the Associate Membership Examination in December 2003. The record also contains the Beneficiary's marks sheets from [redacted]. Three show that he passed examinations in June 2001, December 2002, and December 2003; and two show that he failed examinations in June 2002 and June 2003. The marks sheets do not list actual exam subjects, but instead list "subject codes" starting with TE, A, BC, or BO.

The Petitioner submitted an evaluation of the Beneficiary's academic and experience credentials from Park Evaluations & Translations (Park). The evaluation asserted that the Beneficiary's credentials from [redacted] are equivalent to a bachelor of science degree in mechanical engineering from an accredited institution in the United States. It further stated that based on a combination of academics and professional experience, he has the equivalent of a bachelor of science degree in management information systems.

The Petitioner also submitted an evaluation of the Beneficiary's academic credentials from Trusteforte. The evaluation asserted that the Beneficiary's credentials from [redacted] are equivalent to a four-year bachelor of science degree in mechanical engineering from an accredited college or university in the United States. The evaluation cites the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),² which states associate membership in [redacted] "represents attainment of a level of education comparable to a bachelor's degree in the United States."³ EDGE further states that "Part A and B is awarded upon completion of Section 'A' examination basic commonalities and Section B examination consisting of compulsory, advanced commonality, discipline commonalities and specialization options courses in various Engineering Divisions... following the Higher Secondary Certificate." *Id.*

We consider EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies. With regard to the Beneficiary's [redacted] credentials, EDGE does not find that the final examination certificate from [redacted] and associate membership in [redacted] constitute a "foreign equivalent degree" to a U.S. baccalaureate degree, as required in 8 C.F.R. § 204.5(k)(3)(i)(B). This is because

² AACRAO is described on its website as "a non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." AACRAO, <http://www.aacrao.org/who-we-are> (last visited Sept. 23, 2019). EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." AACRAO EDGE, <http://edge.aacrao.org/info.php> (last visited Sept. 23, 2019).

³ AACRAO EDGE, <http://edge.aacrao.org/country/credential/associate-membership-in-one-of-three-indian-professional-engineering-associations?cid=single> (last visited Sept. 23, 2019).

[] is not a college or university and is not a degree-granting institution. Instead, EDGE finds the credentials are comparable to a U.S. bachelor's degree.

In a request for evidence (RFE), the Director notified the Petitioner that it had not established that [] is an academic institution that can confer an actual degree with an official college or university record. He requested additional evidence of the Beneficiary's academic qualifications. In response to the RFE, the Petitioner submitted an evaluation from Cayley Aerospace (Cayley), which states that the Beneficiary's credentials from [] are equivalent to a bachelor of science degree in mechanical engineering from an accredited institution in the United States. Further, it also submitted the Beneficiary's transcript from [] showing 14 examination subjects and marks obtained on those examinations.

In denying the petition, found that the Petitioner did not establish that the Beneficiary has the requisite educational degree to qualify for the job offered under the terms of the labor certification or to qualify for classification as an advanced degree professional. On appeal the Petitioner asserts that the Beneficiary's education from [] is equivalent by itself to a four-year bachelor's degree from an accredited college or university in the United States. Therefore, the issues on appeal are whether the Beneficiary has the requisite education to comply with the terms of the labor certification and to qualify for the requested classification.

The terms of the labor certification permit an applicant to qualify for the position with an associate membership examination deemed equivalent to a bachelor's degree by a qualified credential evaluator. Since the Beneficiary's [] associate membership certificate has been deemed equivalent to a bachelor's degree by a qualified credential evaluator, he meets the requirements of the labor certification. Therefore, we withdraw this portion of the Director's decision. However, as detailed below, the Beneficiary does not qualify for classification as an advanced degree professional.

The pertinent regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) states that a petition for an advanced degree professional must be accompanied by an official academic record showing that the Beneficiary has a "U.S. baccalaureate degree or a foreign equivalent degree." According to a transcript of the Beneficiary's examination marks issued by the [] in 2009, the Beneficiary's passage of Section A and Section B of the Associate Membership Examination in 2003 is recognized by the government of India as "at par with a degree in Mechanical Engineering from and Indian university." The [] transcript does not claim, however, that the associate membership certificate is the same as a degree. Nor does the associate membership certificate itself make such a claim. [] is not a college, university, or any other kind of degree-granting academic institution. See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that membership in a similar organization in India, the Institute of Chartered Accountants of India (ICAI), was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). Like ICAI in India, [] is a professional organization, not a college or university, and neither its final examination certificate nor its associate membership certificate is a degree.⁴ While these credentials may be "comparable" to a U.S. bachelor's degree as

⁴ The [] website states that it offers two classes of membership, corporate and non-corporate. Associate membership is part of the corporate class. The website states that to be eligible for admission to a corporate class of membership, a

a measure of educational achievement, they are not, either individually or collectively, a “foreign equivalent degree” to a U.S. baccalaureate degree. Accordingly, they do not qualify the Beneficiary for classification as an advanced degree professional under section 203(b)(2) of the Act.

The equivalency evaluations in the record have little probative value in this proceeding. The credentials evaluation from Park asserts that the Beneficiary’s credentials from [] are equivalent to a bachelor of science degree in mechanical engineering from an accredited institution in the United States. It states that [] “is an accredited institution of higher learning in India” and that following “his enrollment in the University,” the Beneficiary completed “academic coursework” and passed sections A and B of the [] examinations. However, the Petitioner has not established with relevant, probative, and credible evidence that [] is a “University” or that it offered academic coursework. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The transcripts and marks statements show that he sat for examinations, but they do not indicate that he took any courses at []. The Park evaluation also asserts that the Beneficiary “completed coursework” in general studies including “English, mathematics, the sciences, and the social sciences, which are a requisite components of a bachelor’s degree from an institution of higher education in the United States.” However, the record does not establish that he completed any coursework at [] and his transcripts do not show that he took an examination for the subject of English. *Id.* The Park evaluation further states that he completed coursework in mechanical engineering and related areas and that, based on the “courses completed and the number of credit hours earned,” the Beneficiary has the equivalent of a U.S. bachelor of science degree in mechanical engineering. However, the record does not establish that the Beneficiary completed any courses or earned any credit hours at []. *Id.*

The Park evaluation also combined the Beneficiary’s education and experience in determining that he has the equivalent of a bachelor of science degree in management information systems. However, as noted by the Director in his decision, the three-for-one formula cited by the evaluation applies only to H-1B nonimmigrant visa petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (describing a U.S. baccalaureate equivalency for H-1B purposes).

The Trusteforte evaluation determined that the Beneficiary’s credentials from [] are equivalent to a four-year bachelor of science degree in mechanical engineering from an accredited college or university in the United States. It states that [] “offers four-year programs of academic study comparable to bachelor’s degree programs offered by universities in India.” However, the record contains no evidence to support this assertion. The record does not show that the Beneficiary attended any courses at [] or that [] has the infrastructure to support the provision of such courses. *Matter of Chawathe*, 25 I&N Dec. at 376. The evaluation notes that the Department of Education in the Ministry of Human Resources Development of the Government of India, state governments, and leading universities in India have confirmed their recognition of the passage of Section A and Section

candidate must be mechanical engineer possessing a degree in mechanical engineering or must pass Section A and B [] Examinations in addition to two years of experience in the mechanical engineering profession. [] [https://www.\[\].in/other.aspx](https://www.[].in/other.aspx) (last visited Sept. 23, 2019). Here, the Beneficiary appears to have qualified via the second option, which permits a candidate to qualify for associate membership with a combination of examinations and experience in lieu of a degree. Additionally, we note that while the [] website lists its examination subjects, it does not list any courses that it offers in those subjects.

B of the [] Associate Membership Examination as equivalent to a bachelor's degree in mechanical engineering. However, as previously discussed, neither the [] final examination certificate nor its associate membership certificate is a degree. While these credentials may be equivalent to a U.S. bachelor's degree as a measure of educational achievement, they are not, either individually or collectively, a "foreign equivalent degree" to a U.S. baccalaureate degree.

The Trusteforte evaluation further states that its determination is based, in part, on "the reputation of the academic programs offered by the [], the number of years of coursework, the nature of the coursework, the grades attained in the courses," and "the hours of academic coursework." However, the record does not show that [] offers academic programs; it does not identify the number of years of coursework, the nature of the coursework, or the hours of the coursework; and it does not state the grades attained by the Beneficiary in any courses, but instead lists the marks obtained on exams. *Matter of Chawathe*, 25 I&N Dec. at 376.

Further, the Cayley evaluation states that the Beneficiary's credentials from [] are equivalent to a bachelor of science degree in mechanical engineering from an accredited institution in the United States. The evaluation states that he received "120 degree credits in his engineering degree program," but the record contains no evidence of the Beneficiary's college credits. *Id.* It also states that as a prerequisite to entry into the [] program, the Beneficiary "completed his Diploma in Mechanical Engineering from [] in 2001." However, the record does not contain a diploma issued to the Beneficiary in 2001. *Id.* The evaluation also asserts that the Beneficiary "has also completed Intermediate Education (10+2) from Board of Intermediate Education, [] in March 1995." However, the record contains no evidence of this education. *Id.*

Evaluations of academic credentials by evaluation services 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, the evaluations do not establish that the Beneficiary's [] credentials constitute a single foreign equivalent degree to a U.S. bachelor's degree. Neither the Beneficiary's certificates nor his [] membership constitutes a degree from a degree-granting institution. Thus, they do not represent a single source "foreign equivalent degree" to a U.S. baccalaureate degree, and they do not qualify the Beneficiary for classification as an advanced degree professional under section 203(b)(2) of the Act.

In sum, although the Beneficiary meets the requirements of the labor certification, he does not qualify for classification as an advanced degree professional. The appeal will be dismissed for this reason.

III. THE DRUG TEST AND BACKGROUND CHECK

Although unaddressed by the Director, the record also does not establish the Beneficiary's successful completion of a drug test and background check. Part H.14 of the labor certification, "Special skills and other requirements," requires applicants pass a background check and pre-employment drug test.

Drug tests and background checks for offered positions constitute job requirements. *See, e.g., Matter of Honeywell Int'l, Inc.*, 2016-PER-00434, 2018 WL 3232449 *2 (BALCA June 27, 2018) (citation

omitted) (finding contingency on the successful completion of a background check and drug test to constitute a job requirement). The record, however, does not demonstrate the Beneficiary's completion of a drug test and background check. The appeal will be dismissed for this additional reason.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of B-C-A-B-S-O-M-*, ID# 6500478 (AAO Oct. 9, 2019)