



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

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

MATTER OF H-G-S-, INC.

DATE: DEC. 1, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and computer consulting company, seeks to permanently employ the Beneficiary in the United States as a systems analyst under the immigrant classification of professional. *See* Immigration and Nationality Act (the Act) § 203(b)(3)(A)(ii). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The I-140 petition was filed on November 5, 2014. In Part 2.1.e. the Petitioner specified that the petition was being filed for “[a] professional (at a minimum, possessing a bachelor’s degree or a foreign degree equivalent to a U.S. bachelor’s degree).” Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides that preference classification may be granted to “[q]ualified immigrants who hold baccalaureate degrees and who are members of the professions.”

As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on February 19, 2014, and certified by the DOL (labor certification) on July 25, 2014. In Part H of the labor certification the employer specified the minimum educational and experience requirements for the job of systems analyst. With respect to education, the labor certification requires a bachelor’s degree in computer science, engineering, computer applications, or information systems, or a “foreign educational equivalent” (Part H.4, 4-B, 7, 7-A, and 9 of the ETA Form 9089). With respect to experience, the labor certification requires 12 months in the job offered or in an alternate occupation such as Mainframe Developer, Programmer Analyst, or Technical Executive (Band S/Sub Band S-2) (Part H.6, 10, and 10-B of the ETA Form 9089). In Part H.14 of the labor certification (“Specific skills or other requirements”) the educational requirements for the job are modified with the following language:

Reqs. Bachelors in Comp. Sci. or Computer Applications or Information Systems or any engg. Will accept three (3) years relevant college education combined with three (3) years work experience in the job opening or related occupation in lieu of degree requirement. Any suitable combination of training, education or experience will be considered.

(b)(6)

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In a decision dated April 16, 2015, the Director denied the petition on the ground that the labor certification does not support the immigrant classification of professional. The Director cited the Petitioner's statement in Section H, box 14, of the ETA Form 9089 that it will accept three years of relevant college education combined with three years of qualifying work experience in lieu of a degree. Since a bachelor's degree is not required for the job, according to the terms of the certified ETA Form 9089, the Director concluded that the proffered position does not qualify as a professional and the labor certification does not support the requested immigrant visa classification under section 203(b)(3)(A)(ii) of the Act.

The Petitioner filed an appeal, along with a brief and copies of documentation already in the record. We conduct appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

The Petitioner asserts that regardless of the fact that the minimum educational requirement on the labor certification is three years of relevant college education, the Beneficiary has the foreign educational equivalent of a U.S. bachelor of science degree in information systems. The Petitioner bases this claim on an Academic Equivalency Evaluation by [REDACTED] in [REDACTED] of the Beneficiary's two degrees from [REDACTED] India – which include a three-year Bachelor of Computer Applications issued on November 8, 2002, and a two-year Master of Science in Information Systems issued on February 1, 2007.¹ Since the Beneficiary has the foreign equivalent of a U.S. bachelor's degree in a field of study identified on the labor certification, based on the Indian degrees cited above, the Petitioner contends that he is eligible for visa classification as a professional.

The issue on appeal, however, is not whether the Beneficiary has the foreign equivalent of a U.S. bachelor of science degree in information systems. The issue on appeal is whether a bachelor's degree is the minimum requirement of the labor certification, as required to file the I-140 petition for the visa classification of professional. In determining whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* 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. See *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

¹ The [REDACTED] evaluation accords with the credential advice of the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which evaluates a two-year Master of Science degree in India that follows a three-year bachelor's degree as comparable to a bachelor's degree from a U.S. college or university.

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certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834.

The labor certification clearly states that a candidate may qualify for the job of systems analyst with less than a bachelor's degree. As acknowledged by the Petitioner, the labor certification sets forth alternative educational requirements. A candidate may qualify for the job with a bachelor's degree in one of the identified fields of study (Part H.4, 4-B, 7, 7-A, and 9 of the ETA Form 9089). Or, instead of a bachelor's degree, a candidate may qualify for the job with three years of relevant college education and three years of experience in the job offered or a related occupation. (Part H.14 of the ETA Form 9089). Thus, the "plain language" of the labor certification makes clear that the minimum educational requirement for the proffered position is less than a bachelor's degree.

As previously indicated, classification as a professional under section 203(b)(3)(A)(ii) of the Act is limited to "[q]ualified immigrants who hold baccalaureate degrees." In this case, therefore, the labor certification does not support the preference classification sought in the I-140 petition since it allows for less than a bachelor's degree. Accordingly, the petition cannot be approved.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigrant benefit sought. *See* section 291 of the Act 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of H-G-S-, INC.*, ID# 15616 (AAO Dec. 1, 2015)