



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

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

MATTER OF B- INC.

DATE: APR. 7, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of therapy and special education services for preschool children, seeks to permanently employ the Beneficiary as a service coordinator supervisor. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director, Texas Service Center, denied the petition. The Director concluded that the record did not establish the Beneficiary's educational qualifications for the offered position.

The matter is now before us on appeal. The Petitioner asserts that the Director erred in discounting the Beneficiary's foreign degree, which she obtained through a combination of education and experience, and improperly ignored the conclusions of the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). Upon *de novo* review, we will dismiss the appeal.

I. THE BENEFICIARY'S EDUCATIONAL QUALIFICATIONS

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

Further, a petition for a professional must be accompanied by "evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C).

(b)(6)

Matter of B- Inc.

“Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.” *Id.*

In the instant case, an ETA Form 9089, Application for Permanent Employment certification (labor certification), approved by the U.S. Department of Labor (DOL), accompanies the petition. The petition’s priority date is October 18, 2013, the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

The accompanying labor certification states the minimum educational requirements of the offered position of service coordinator supervisor as a U.S. Bachelor’s degree or a foreign equivalent degree in early childhood education, special education, or a closely related field.¹ The Beneficiary attested on the accompanying labor certification to her receipt of a Bachelor’s degree in early childhood education from the [REDACTED] in 2008.

In support of the Beneficiary’s claimed educational qualifications, the Petitioner submitted copies of her 1993 Bachelor’s degree (titulo de licenciada) in computer science from the [REDACTED] and a transcript of her university studies, which ended in 1992. The Petitioner also submitted copies of documentation from the Ministry of Public Education of Mexico, demonstrating that the Beneficiary passed a 2006 “test for the accreditation of knowledge and abilities equivalent to those of the bachelor’s degree in preschool education,” and that the process to issue her a degree in preschool education began in 2008.

The record also contains a March 21, 2008, evaluation of the Beneficiary’s foreign educational credentials by [REDACTED] for [REDACTED]. The evaluation states that the Beneficiary completed a four-year undergraduate program in computer science and later passed professional examinations required for her licensure as a preschool teacher in Mexico that equated to a bachelor’s-level concentration in the field of early childhood education.

The evaluation indicates that qualification as a teacher requires: Bachelor’s-level studies in education or comparable academic studies; passage of professional exams; and qualifying professional experience. The evaluation states: “The educational component for qualification mandates that a candidate must have attained a bachelor’s-level degree and completed bachelor’s-level coursework in the field [of] Education.” The evaluation concludes that the Beneficiary possesses the equivalent of a U.S. Bachelor of Science degree, with a dual major in early childhood education and computer science.

The Director found that the record established the Beneficiary’s possession of the foreign equivalent of a U.S. Bachelor’s degree in computer science. However, the Director found that the record did not establish her possession of the equivalent of a U.S. Bachelor’s degree in early childhood

¹ The labor certification also states that the offered position requires 12 months of experience in the job offered or as a service coordinator or preschool education administrator, and “Spanish language ability.”

education, special education, or a closely related field as specified on the accompanying labor certification.

The documentation from the Ministry of Public Education suggested the Beneficiary's attainment of the equivalent of a Bachelor's degree in preschool education. However, the Director noted the documentation's issuance by the ministry, "which is neither a college nor a university." See 8 C.F.R. § 204.5(l)(3)(ii)(C) (stating that "[e]vidence of a baccalaureate degree shall be in the form of an official college or university record").

On appeal, the Petitioner submits additional documentation, including a copy of an April 8, 2008, Bachelor's degree (titulo de licenciada) in preschool education issued to the Beneficiary by the Secretariat of Public Education of Mexico. The additional documentation clarifies the Beneficiary's receipt of the Bachelor's degree in preschool education under a Mexican law that allows holders of baccalaureates in other fields who have served as preschool teachers for at least three school cycles to pass examinations and obtain degrees in preschool education. See Agreement No. 357, *Diario Oficial de la Federacion*, June 3, 2005, available at http://www.dof.gob.mx/nota_detalle.php?codigo=2043605&fecha=03/06/2005 (accessed Feb. 19, 2016).

The record on appeal establishes the Beneficiary's possession of a Bachelor's degree in preschool education from Mexico. However, the Beneficiary's degree reflects a combination of education and experience that does not meet the job requirements stated on the accompanying labor certification or the regulatory requirements for classification as a professional.

A. The Job Requirements Stated on the Accompanying Labor Certification

Sections H.4 and H.9 of the ETA Form 9089 state the minimum educational requirements of the offered position as a U.S. Bachelor's degree or a foreign equivalent degree. Neither section H.8 nor H.14 of the form indicate any acceptable, alternate combination of education and experience, or any other acceptable educational credential. The accompanying labor certification therefore indicates a minimum educational requirement of a U.S. Bachelor's degree or a foreign equivalent degree, rather than a combination of education and experience in an acceptable field as possessed by the Beneficiary. See *SnapNames.com, Inc. v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005 **8, 10-11 (D. Or. Nov. 30, 2006) (upholding USCIS' conclusions that work experience was not properly considered in determining whether a beneficiary had a "B.S. or equivalent" as stated on an accompanying labor certification and that classification as a professional or advanced degree professional requires a single equivalent baccalaureate degree).

B. The Regulatory Requirements for Classification as a Professional

Also, as previously indicated, the regulations for professional classification specify that "[e]vidence of a baccalaureate degree shall be in the form of an official college or university record". 8 C.F.R. § 204.5(l)(3)(ii)(C); cf. 8 C.F.R. § 204.5(k)(3)(ii)(A) (allowing a beneficiary seeking classification as an alien of exceptional ability to submit "[a]n official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution

of learning relating to the area of exceptional ability”). The Beneficiary’s Bachelor’s degree in preschool education indicates its issuance by a government ministry, rather than by a college or university as specified by the regulations governing professional classification.

The Petitioner asserts that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) does not plainly require the acquisition of a Bachelor’s degree solely through university coursework. The Petitioner asserts that the regulation’s statement that “[e]vidence of a baccalaureate degree shall be in the form of an official college or university record” merely “presumed” the form of the evidence. The Petitioner asserts that the “language of the regulation does not clearly or plainly create a requirement that a degree may only be equivalent to a U.S. Bachelor’s if obtained through university study.”

We are not persuaded by the Petitioner’s assertions. We believe the regulatory command that, for the professional classification, “[e]vidence of a baccalaureate degree shall be in the form of an official college or university record” clearly indicates that a baccalaureate equivalency must be obtained entirely through academic study.

The Petitioner’s argument also ignores the legislative history of The Immigration Act of 1990, Pub. L. 101-649, which promulgated the current immigrant visa system. In response to criticism that the regulations at 8 C.F.R. § 204.5 do not permit professional qualification through a combination of education and experience, the former Immigration and Naturalization Service (INS) reviewed Congress’ Joint Explanatory Statement of the Committee of Conference. The INS found that “both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor’s degree.*” Final Rule on Employment-Based Immigration, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

Thus, based on the regulatory language requiring “an official college or university record” and the the legislative history of the Act, we reject the Petitioner’s assertion that a beneficiary need not obtain a baccalaureate equivalency solely through college or university coursework.

The Petitioner notes that regulatory provisions for other immigration classifications allow for combinations of education and experience. *See* 8 C.F.R. §§ 204.5(k)(2), 214.2(h)(4)(iii)(D) (allowing combinations of education and experience to meet the requirements for an immigrant in the advanced degree professional classification and a nonimmigrant in the H-1B work visa category, respectively). However, the regulatory provisions cited by the Petitioner are specific to their respective classifications. The lack of similar language in 8 C.F.R. § 204.5(l) indicates that such combinations of education and experience do not meet the qualifications for immigrant classification as a professional.

C. The Conclusions of EDGE

The Petitioner also asserts that we inconsistently ignore the conclusions of the AACRAO's EDGE, upon which we and federal courts have relied in other cases.² AACRAO is "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, <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See AACRAO EDGE, <http://edge.aacrao.org/info.php>.

The Petitioner notes that EDGE indicates that a titulo de licenciada from Mexico may be comparable to a U.S. Bachelor's degree. Therefore, it asserts that, pursuant to EDGE, the Beneficiary's titulo de licenciada in preschool education equates to a U.S. Bachelor's degree in preschool education.

However, EDGE reports that a titulo de licenciada represents "3 to 5 years of post-secondary coursework" and that only programs of at least four years in duration equate to a U.S. bachelor's degree. As previously discussed, the instant record indicates the Beneficiary's acquisition of her Bachelor's degree in preschool education through a combination of education and experience. The record does not establish her possession of the baccalaureate in preschool education through at least four years of relevant post-secondary coursework as contemplated by EDGE. We therefore reject the Petitioner's assertion that our decision is inconsistent with the information in EDGE.

For the foregoing reasons, the record on appeal does not establish the Beneficiary's possession of the qualifying education for the offered position as specified on the accompanying labor certification. We will therefore affirm the Director's decision and dismiss the appeal.

II. THE PETITIONER'S ABILITY TO PAY THE PROFFERED WAGE

In addition to the deficiencies in the petition noted by the Director, we independently note that the record also does not establish the Petitioner's continuing ability to pay the proffered wage.³

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2).

² See, e.g., *Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (finding that USCIS has discretion to discount the letters and evaluations submitted by a petitioner if they differ from reports in EDGE, which is "a respected source of information"); *Tisco Grp., Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314, *4 (E.D. Mich. Aug. 30, 2010) (finding that USCIS properly weighed the evaluations submitted by a petitioner and information from EDGE to conclude that a beneficiary's foreign degrees did not equate to a U.S. Master's degree).

³ We may deny a petition that does not comply with the technical requirements of the law even if a director does not identify all of the grounds for denial in the initial decision. *Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

(b)(6)

Matter of B- Inc.

Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In the instant case, the accompanying labor certification states the proffered wage of the offered position of service coordinator supervisor as \$62,213 per year. As previously indicated, the petition's priority date is October 18, 2013.

In support of its ability to pay, the Petitioner submitted copies of its federal tax returns from 2010 through 2012. However, the record lacks required evidence of the Petitioner's ability to pay in 2013, the year of the petition's priority date, and beyond. The record indicates the petition's filing on July 28, 2014. The record does not explain the absence at that time of required evidence of the Petitioner's ability to pay in 2013.

The record does not establish the Petitioner's ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). In any future filings in this matter, the Petitioner must submit copies of annual reports, federal income tax returns, or audited financial statements for 2013, 2014, and 2015.

Also, USCIS records indicate the Petitioner's filing of at least 14 Forms I-140, Immigrant Petitions for Alien Workers, for other beneficiaries after the instant petition's priority date.⁴

A petitioner must demonstrate its continuing ability to pay the proffered wage of each petition it files. *See* 8 C.F.R. § 204.5(g)(2). The instant Petitioner must therefore demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other petitions that remained pending after the instant petition's priority date. The Petitioner must demonstrate its ability to pay the combined proffered wages from the instant petition's priority date until the other beneficiaries obtained lawful permanent residence, or until their petitions were denied, withdrawn, or revoked. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not establish its ability to pay multiple beneficiaries).

The record does not document the priority date or proffered wage of the Petitioner's other pending petitions, or whether it paid wages to any of the other beneficiaries. The record also does not indicate whether any of the other petitions were withdrawn, revoked, or denied, or whether any of the other beneficiaries obtained lawful permanent residence. Thus, the record does not establish the Petitioner's continuing ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other pending petitions.

For the foregoing reasons, the record does not establish the Petitioner's continuing ability to pay the proffered wage. We will therefore also dismiss the appeal on this ground.

⁴ USCIS records identify the 14 other petitions by the following receipt numbers: [REDACTED]

(b)(6)

Matter of B- Inc.

III. THE BENEFICIARY'S QUALIFYING EXPERIENCE

We also note that the record does not establish the Beneficiary's qualifying experience for the offered position.

As previously indicated, a petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Wing's Tea House*, 16 I&N Dec. at 159; *Katigbak*, 14 I&N Dec. at 49.

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine*, 699 F.2d at 1009; *Madany*, 696 F.2d at 1015; *Stewart*, 661 F.2d at 3.

In the instant case, the accompanying labor certification states the minimum experience requirements for the offered position of service coordinator supervisor as 12 months in the job offered, or 12 months as a service coordinator or preschool education administrator.

The Beneficiary attested on the accompanying labor certification to more than five years of full-time experience with the Petitioner by the petition's priority date of October 18, 2013. The Beneficiary stated her employment by the Petitioner as an evaluations coordinator from September 23, 2008 to September 18, 2011, and as a service coordinator since September 19, 2011.

An employer may not generally rely on qualifying experience that a foreign national gained with it. 20 C.F.R. § 656.17(i) (2) (stating that an "employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity"). Experience gained with an employer may only be used if the foreign national gained the experience in a position not "substantially comparable" to the offered position, or the employer demonstrates that "it is no longer feasible to train a worker to qualify for the position." 20 C.F.R. § 656.17(i)(3). A "substantially comparable" position means a job "requiring performance of the same job duties more than 50 percent of the time." 20 C.F.R. § 656.17(i)(5)(ii).

In the instant case, despite the Beneficiary's attestation on the labor certification to qualifying experience only with the Petitioner, the Petitioner does not appear to rely on experience that the Beneficiary gained with it. In a July 22, 2014, letter, the Petitioner's human resources manager states that the Beneficiary gained qualifying experience as an assistant director of the educational subdivision of the [REDACTED] in Mexico from June 2002 to August 2007.

A petitioner must support a beneficiary's claimed qualifying experience with a letter from an employer. 8 C.F.R. § 204.5(l)(3)(ii). The letter must provide the employer's name, title, and address, and describe the beneficiary's experience. *Id.* If a required letter is unavailable, a petitioner

(b)(6)

Matter of B- Inc.

must document that unavailability before we will consider other evidence of a beneficiary's qualifying experience. 8 C.F.R. § 103.2(b)(2)(i).

We note that, under Mexican law, the Beneficiary's receipt of her titulo de licenciada in preschool education is evidence of her possession of at least three years of experience as a preschool teacher. However, the accompanying labor certification requires experience in the offered position of service coordinator supervisor, service coordinator, or preschool education administrator. The record does not establish that the Beneficiary's employment as a preschool teacher in Mexico constitutes experience in the job offered or in an acceptable alternate occupation stated on the labor certification.

The record contains a May 16, 2013, letter on [REDACTED] stationery. The letter's signatory identifies herself as the former director of the [REDACTED] in Mexico. The letter states that the institute employed the Beneficiary full-time as an assistant director, educational subdivision, from June 2002 to August 2007, and closed in December 2010. The letter also describes the Beneficiary's job duties.

The absence of the Beneficiary's purported employment at [REDACTED] the accompanying labor certification casts doubt on the claimed qualifying experience. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (Distr. Dir. 1976) (finding testimony of qualifying experience by an applicant for adjustment of status to be not credible where the experience was not stated on the accompanying labor certification). To demonstrate experience not listed on the labor certification, the Petitioner must submit independent, objective evidence establishing that experience. The record does not contain such independent, objective evidence.

For the foregoing reasons, the record does not establish the Beneficiary's qualifying experience for the offered position as specified on the accompanying labor certification by the petition's priority date. We will therefore also dismiss the appeal on this ground.

IV. CONCLUSION

The record does not establish the Beneficiary's possession of the educational qualifications for the offered position as specified on the accompanying labor certification. We will therefore affirm the Director's decision and dismiss the appeal. The record also does not establish the Petitioner's continuing ability to pay the proffered wage, or the Beneficiary's qualifying experience for the offered position. We will therefore also dismiss the appeal on these grounds.

The petition will be denied for the above stated reasons, with each considered an independent and alternative basis for denial. In visa petition proceedings, a petitioner bears the burden of proving eligibility for the benefit sought. INA § 291, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

Matter of B- Inc.

ORDER: The appeal is dismissed.

Cite as *Matter of B- Inc.*, ID# 16226 (AAO Apr. 7, 2016)