



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

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

MATTER OF A-P-N-O-C-, LLC

DATE: AUG. 5, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a produce importer and distributor, seeks to employ the Beneficiary as an agricultural engineer. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition on December 1, 2015, as the Petitioner had not established that the Beneficiary possessed the education specified in the job offer. The Petitioner has also not established that the Beneficiary has the education to be classified as a professional.

The matter is now before us on appeal. The Petitioner asserts that the Director erred in concluding that the Beneficiary's studies did not satisfy the education requirements of the job offer. Upon *de novo* review, we will dismiss the appeal.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the Department of Labor (DOL).¹ The priority date of the petition is June 11, 2014.²

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

- H.4. Education: minimum level required: Bachelor's degree.
- ...
- H.4-B. Major field of study: Agricultural engineering.

¹ *See* Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

² The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

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- H.6. Is experience in the job offered required for the job? Yes.
- H.6-A. If Yes, number of months experience required: 24.
- H.7. Is there an alternate field of study that is acceptable? No.
- H.8. Is there an alternate combination of education and experience that is acceptable? No.
- H.9. Is a foreign educational equivalent acceptable? Yes.
- ...
- H.14. Specific skills or other requirements: None listed.

On the labor certification, in Part J.11., J.12., and J.13., the Beneficiary listed his education as a bachelor's degree in agricultural engineering from [REDACTED] in Brazil, completed in 2010. The Petitioner submitted copies of the Beneficiary's diploma and academic transcript from the [REDACTED] reflecting study from 2007 through 2008, "Link Enrollment" in 2009, and a curricular internship in 2010. The diploma shows that the Beneficiary was awarded "a degree of management technology of irrigated fruit production."

The Petitioner submitted a credentials evaluation performed on April 23, 2012, by [REDACTED] for [REDACTED]. After reviewing the Beneficiary's academic credentials and employment history, [REDACTED] concluded that the Beneficiary "has completed the equivalent of three years of undergraduate study" and that when combined with his work experience from February 2004 to December 2005 and from June 2010 to November 2011 it formed the "equivalent to the U.S. degree of Bachelor of Science in Agriculture with a concentration in Agricultural Engineering Technology awarded by a regionally accredited university in the United States."

In his decision, the Director noted that the labor certification requires applicants to possess a bachelor's degree in agricultural engineering and that the labor certification expressly states that the Petitioner would not accept a lesser degree combined with work experience in lieu of the bachelor's degree. The Director found that the Beneficiary's education did not satisfy the requirements of the labor certification. Therefore, the Director denied the petition.

II. LAW AND ANALYSIS

A. Requirements for a Professional

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. 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.

Section 101(a)(32) of the Act defines the term “profession” to include, but is not limited to, “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” If the offered position is not statutorily defined as a profession, “the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.” 8 C.F.R. § 204.5(l)(3)(ii)(C).

In addition, the job offer portion of the labor certification underlying a petition for a professional “must demonstrate that the job requires the minimum of a baccalaureate degree.” 8 C.F.R. § 204.5(l)(3)(i).

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor’s degree as a minimum for entry; the beneficiary possesses a U.S. bachelor’s degree or foreign equivalent degree from a college or university; the job offer portion of the labor certification requires at least a bachelor’s degree or foreign equivalent degree; and the beneficiary meets all of the requirements of the labor certification.

It is noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional.³ The regulation also requires the submission of “an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study.” 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). In another context, Congress has broadly referenced “the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning.” Section 203(b)(2)(C) of the Act (relating to aliens of exceptional ability). However, for the professional category, it is clear that the degree must be from a college or university.

³ In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor’s degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor’s degree: “[B]oth 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.*” 56 Fed. Reg. 60897, 60900 (November 29, 1991) (emphasis added).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress’ requirement of a single “degree” for members of the professions is deliberate.

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Thus, the plain meaning of the Act and the regulations is that the beneficiary of a petition for a professional must possess a degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree.

In the instant case, the labor certification states that the position requires a bachelor's degree in agricultural engineering. A bachelor's degree is generally found to require 4 years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). As the Petitioner's submitted evaluation shows, the Beneficiary does not have a bachelor's degree.

The labor certification allows a petitioner numerous opportunities to indicate its willingness to accept alternatives to the minimum required education stated at Line H.4. The Petitioner in this case expressly stated that a combination of education and experience would not be accepted in place of a bachelor's degree in agricultural engineering. Further, the professional category requires that the petition require a bachelor's degree and that the beneficiary have a bachelor's degree.

B. The Beneficiary's Education

On appeal, the Petitioner cites the credentials evaluation performed by [REDACTED] who relies on the Beneficiary's academic studies combined with his employment experience as being equivalent to a U.S. bachelor's degree. The Petitioner suggests that it was willing to accept less than a U.S. bachelor's degree or foreign equivalent; however, the professional category requires a bachelor's degree, the labor certification states the requirement of a bachelor's degree, and the Beneficiary claimed to have a bachelor's degree. However, the Petitioner's evaluation submitted states the Beneficiary has only three years of undergraduate studies. Nothing in the evaluation states that the Beneficiary has the full bachelor's degree required for the classification or by the labor certification.

We have also reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), "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." <http://www.aacrao.org/About-AACRAO.aspx> (accessed August 1, 2016). Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁴

EDGE states that a [REDACTED] degree in Brazil "represents attainment of a level of education comparable to two to three years of university study depending on entrance qualifications and the field of study. This represents "attainment of a level of education comparable to two or three years of university study in the United States. Credit may be awarded on a course-by-course basis."

⁴ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for our reliance on information provided by AACRAO to support our decision.

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As we do not know the entrance qualifications, we cannot determine whether the Beneficiary's studies are equal to two or three years of study. Regardless, even based on the Petitioner's evaluation, the Beneficiary's education is not equal to a U.S. bachelor's degree.

Counsel refers to letters dated January 7, 2003 and July 23, 2003, respectively, from [REDACTED] of the [REDACTED] Office of Adjudications to counsel in other cases, expressing his opinion about the possible alternative means to satisfy educational requirements.⁵ However, these letters are not on point in this case. The professional category clearly requires an actual degree. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." Nothing in the regulation for this category allows for the substitution of a combination of education and experience in place of a bachelor's degree.

The terms of the labor certification require a 4-year U.S. bachelor's degree in agricultural engineering or a foreign equivalent degree. The professional category requires a bachelor's degree. The Beneficiary does not possess such a degree. Thus, the Petitioner did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

C. The Beneficiary's Employment Experience

Beyond the decision of the Director, the Petitioner has also not established that the Beneficiary has the experience required for the position offered. The petitioner must establish that the beneficiary possessed all the education, training, and experience 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); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires 24 months of experience in the offered job of agricultural engineer. On the labor certification, the Beneficiary claims to qualify for the offered position based on experience as an agricultural engineer for [REDACTED] in [REDACTED] Brazil, from July 1, 2010, until August 31, 2012. He did not list any other experience.

⁵ It is noted that private discussions and correspondence solicited to obtain advice from USCIS are not binding on us or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm'r 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

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The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. See 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains a letter dated April 20, 2012, from [REDACTED] who identified himself as a packinghouse manager for [REDACTED] and who stated that the Beneficiary worked there as an agricultural quality control manager from June 1, 2010, until November 30, 2011. The record also contains a letter dated April 20, 2012, from [REDACTED] who identified himself as a packinghouse manager for [REDACTED] and who stated that the Beneficiary worked there as an agricultural quality control manager from February 2, 2004, until December 31, 2005.

The employment dates on the letters submitted by the Petitioner do not match the employment dates claimed by the Beneficiary on the labor certification. The experience claimed on the [REDACTED] letter was not listed on the labor certification. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's labor certification, lessens the credibility of the evidence and facts asserted. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence in the record does not establish that the Beneficiary possessed the required experience set forth on the labor certification by the priority date. For this reason, the Petitioner has also not established that the Beneficiary satisfies the requirements for the offered position stated on the labor certification.

III. CONCLUSION

In summary, the Petitioner did not establish that the Beneficiary possesses the educational credentials required by the labor certification. Further, the Petitioner did not establish that the Beneficiary possesses the minimum employment experience required by the labor certification.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate 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; See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *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 A-P-N-O-C-, LLC*, ID# 11866 (AAO Aug. 5, 2016)