



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

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

MATTER OF N-, INC.

DATE: MAY 27, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an IT consulting company, seeks to permanently employ the Beneficiary in the United States as a programmer analyst under the immigrant classification of professional. *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. The Director found that the job opportunity requirements on the labor certification are less than a bachelor's degree and do not match the visa classification sought in the petition.

The matter is now before us on appeal. The Petitioner submits a brief and supporting documents, asserts that the Beneficiary meets the requirements of the labor certification, and requests that the petition be approved for classification of the Beneficiary as a professional. Upon *de novo* review, we will dismiss the appeal.

I. CASE HISTORY

The petition, Form I-140, was filed on November 24, 2015. 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)(ii), provides that preference classification may be granted to “[q]ualified immigrants who hold baccalaureate degrees.”

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 July 28, 2014, and certified by the DOL (labor certification) on October 14, 2015. In Part H of the labor certification the employer specified the minimum educational and experience requirements for the job of programmer analyst. With respect to education, the labor certification requires a bachelor’s degree in computer science, engineering, CIS (computer information systems), or science, or a foreign educational equivalent (boxes H.4, H.4-B, H.7, H.7-A, and H.9 of the ETA Form 9089). With respect to experience, the labor certification requires 12 months in an occupation such as computer programmer, assistant systems engineer, or any IT related occupation (boxes H.6, H.10,

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and H.10-B of the ETA Form 9089). In box H.14 of the labor certification (“Specific skills or other requirements”) the educational requirements for the job are modified with the following language:

As an alternative a three year Bachelors Degree with relevant education, training or experience equating it to a 4 years bachelor degree is acceptable.

On December 7, 2015, the Director denied the petition on the ground that the minimum educational requirements on the labor certification do not match the educational requirement for the employment-based immigrant classification of professional. Citing the Petitioner’s statement in box H.14 of the ETA Form 9089 that it will accept a three-year bachelor’s degree with relevant education, training or experience equating to a four-year bachelor’s degree, the Director concluded that the job opportunity requires a three-year bachelor’s degree and experience, which are not the same as the minimum requirement of a bachelor’s degree under section 203(b)(3)(A)(ii) of the Act. The Director noted that, in contrast to nonimmigrant petitions, experience may not be substituted for education to meet the minimum educational requirements in immigrant petitions.

On appeal the Petitioner points out that the Beneficiary has a four-year bachelor of technology degree in computer science and engineering from [REDACTED] in [REDACTED] India, and more than a year of relevant experience, which qualifies her for the job offered under the terms of the labor certification. The Petitioner states that the entry in box H.14 of the labor certification – which allows the minimum educational requirement to be fulfilled with the equivalent of a four-year bachelor’s degree consisting of a three-year bachelor’s degree plus relevant training or experience – was intended to make the job available to a wider field of individuals. According to the Petitioner, its answer of “yes” in box H.9 (“Is a foreign educational equivalent acceptable?”) manifests its intent to accept a combination of education and experience deemed equivalent to a U.S. bachelor’s degree, and is consistent with the requirement of a four-year U.S. bachelor’s degree.

II. LAW AND ANALYSIS

The issue on appeal is not whether the Beneficiary meets the minimum educational and experience requirements of the labor certification or qualifies as a professional. The issue on appeal is whether a bachelor’s degree is the minimum educational requirement for the job offered under the terms of the labor certification, because that is the degree required to be eligible for classification as a professional under section 203(b)(2)(A)(ii) of the Act. The regulation at 8 C.F.R. § 204.5(l)(3)(i) provides that “[t]he job offer portion of an individual labor certification . . . must demonstrate that the job requires the minimum of a baccalaureate degree.” Furthermore, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states that “[i]f 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*.” (Emphasis added.) Thus, the regulations make clear that classification as a professional

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under section 203(b)(2)(A)(ii) of the Act requires either a U.S. baccalaureate degree or a foreign equivalent degree.¹

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). Our interpretation of the job’s requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834.

In this case, the labor certification plainly states that a candidate may qualify for the job of programmer analyst with less than a four-year bachelor’s degree, which is the standard duration of a bachelor’s degree in the United States. See *Matter of Shah*, 17 I&N Dec. 244 (Reg’l Comm’r 1977). Box H.14 of the labor certification sets forth alternative educational requirements whereby an applicant may qualify for the job with a three-year bachelor’s degree in a relevant field plus relevant training or experience, if these qualifications are deemed to be the equivalent of a four-year bachelor’s degree. While a combination of education and experience may be considered equivalent to a bachelor’s degree for some purposes, it is not the same as a “United States baccalaureate degree or a foreign equivalent degree” standing alone, as the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) prescribes. Thus, the “plain language” of the labor certification makes clear that the minimum educational requirement for the proffered position is less than a U.S. bachelor’s degree or a foreign equivalent 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.” The labor certification in this case does not support the preference classification sought in the I-140 petition since it allows an applicant to qualify for the job with less than a baccalaureate degree. Accordingly, the petition cannot be approved.

We independently note that the service certificate submitted as evidence that the Beneficiary was employed as an assistant systems engineer by [REDACTED] in [REDACTED] India, from May 31, 2007, to September 30, 2009, does not meet the substantive requirements of the regulation at 8 C.F.R. § 204.5(g)(1), which provides as follows:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

¹ The petition, Form I-140, states the same in Part 2.1.e.

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While the service certificate from [REDACTED] bears the signature of its general manager and states the Beneficiary's job title and dates of service, it does not provide a specific description of the job duties he performed. Lacking this substantive information, the certificate does not represent persuasive evidence that the Beneficiary gained any experience as an assistant systems engineer at [REDACTED]

For the Beneficiary to be eligible for the visa classification requested, the Petitioner must establish that the Beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date (in this case, July 28, 2014). *See 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). As previously indicated, the ETA Form 9089 requires 12 months of experience as a computer programmer, assistant systems engineer, or any IT related occupation (boxes H.6, H.10, and H.10-B), and indicates in box J.21 that the Beneficiary did not gain any qualifying experience with the Petitioner in a substantially comparable position to the job offered. The only qualifying experience listed on the labor certification, therefore, was the job with [REDACTED] (ETA Form 9089, box K.b).

Since the evidence of record does not establish that the Beneficiary gained at least one year of experience as an assistant systems engineer with [REDACTED] the Beneficiary does not meet the minimum experience requirement of the labor certification. For this reason as well, therefore, the petition cannot be approved.

III. CONCLUSION

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 N-, Inc.*, ID# 17480 (AAO May 27, 2016)