



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

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

In Re: 28744418

Date: Nov. 15, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, a manufacturer of training simulators, seeks to employ the Beneficiary as a software integration engineer. It requests classification of the Beneficiary under the third-preference, immigrant classification for professional workers. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based, “EB-3” category allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the minimum requirements for the offered position. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a foreign national may finally 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.

II. ANALYSIS

The regulation at 8 C.F.R. § 204.5(l)(2) defines “professional” as “a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree.” A petition seeking professional classification, therefore, must be accompanied by a labor certification that requires the minimum of a baccalaureate degree to qualify for the proffered position. 8 C.F.R. § 204.5(l)(3)(i). A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition’s priority date,¹ which in this case is December 14, 2021. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

A. Requirements of the Labor Certification

In order to determine what a job opportunity requires, we must examine “the language of the labor certification job requirements.” *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must 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). Our interpretation of the job’s requirements must involve reading and applying the plain language of the labor certification application. *Id.* at 834. Moreover, we read the labor certification as a whole to determine its requirements. “The Form ETA 9089 is a legal document and as such the document must be considered in its entirety.” *Matter of Symbioun Techs., Inc.*, 2010-PER-10422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a “comprehensive reading of all of Section H” of the labor certification clarified an employer’s minimum job requirements).

In this case, section H of the labor certification states the following with respect to the requirements for the proffered position of software integration engineer:

H.4. Education:	Minimum level required:	Bachelor’s Degree
H.4-B Major Field of Study:		Computer Science
H.5	Is training required for the job?	No
H.6	Is experience in the job offered required?	Yes
H.6-A	How long?	24 months
H.7	Is an alternate field of study acceptable?	No
H.8	Is an alternate combination of education and experience acceptable?	No
H.9	Is a foreign educational equivalent acceptable?	Yes
H.10	Is experience in an alternate occupation acceptable?	No
H.14	Specific skills or other requirements:	

24 months experience must be with designing, developing and maintaining modifications to [redacted] Software and related applications, and programming Pokeys 57E interface device to integrate that software with simulator hardware components.

¹ The priority date of a petition is ordinarily the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

Will accept a 3 year or 4 year degree to meet the requirements set forth in H-4 above.

A prior ETA-9089 was filed on 12/09/2019 and approved on 04/23/2020 (A-19275-65466) for this same position and alien. We are refiling the same application because the prior ETA-9089 failed to indicate that a 3 year degree in Computer Science was acceptable to meet the requirement set forth at H-4.

According to its plain language, therefore, the labor certification's minimum educational requirement is a three- or four-year bachelor's degree in computer science, and its minimum experience requirement is 24 months in the job offered, as a software integration engineer. The Petitioner did not allow for, and will not accept, a lesser degree, "other" education in the form of three years of study, or an alternate combination of education and experience, or experience in an alternate occupation.

B. Beneficiary's Qualifications for the Offered Position

On the labor certification, the Beneficiary attested that, by the petition's priority date, he received a bachelor's degree in computer science from the University [redacted] in Spain. In part J.11., the Beneficiary's highest noted education related to the job opportunity was "bachelor's" degree, and not any bachelor's equivalent. With its initial evidence the Petitioner submitted copies of the Beneficiary's academic records which shows that he was awarded the credential of *Ingeniero Tecnico* from the University [redacted] in Spain on February 15, 2007. The academic transcripts list the "Official length of the programme" as three years. Along with the Beneficiary's academic records the Petitioner submitted an academic equivalency evaluation from Evaluation World LLC, dated March 6, 2017. The evaluation concludes that the Beneficiary's *Ingeniero Tecnico* from the University of [redacted] is equivalent to three years of university study in computer science.²

In his decision, the Director concluded that the Beneficiary's educational credentials did not meet the minimum requirements as set forth on the accompanying labor certification. The Director concluded that the Beneficiary's three-year *Ingeniero Tecnico* was not equivalent to a U.S. bachelor's or foreign equivalent degree and that he did not qualify for the offered position. The Director stated that he consulted the Educational Database for Global Education (EDGE),³ created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁴ The credential advice for the *Ingeniero Tecnico* in EDGE states, "The *Ingeniero Tecnico* represents attainment of a level of education comparable to 3 years of university study in the United States."⁵ The Director also noted

² The evaluation also states that the Beneficiary has nine years of professional experience and determines that the combination of the Beneficiary's professional experience and three-years of academic study is equivalent to a bachelor of science degree in computer science from a regionally accredited college or university in the United States.

³ EDGE is described on its information page as "a valuable resource for evaluating educational credentials earned in foreign systems, whether the purpose is ultimately for admission into an institution of higher learning in the United States, to obtain employment, to establish visa eligibility, or to qualify for additional professional qualifications." <https://www.aacrao.org/resources/AACRAO-International/about-edge>.

⁴ AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." <http://www.aacrao.org/who-we-are>.

⁵ Federal judges have found EDGE, an online resource created by the American Association of Collegiate Registrars and Admissions Officers, to constitute a reliable source of foreign educational equivalencies. See, e.g., *Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

that, although the credential evaluation combines the Beneficiary's education and experience to conclude that he possesses the foreign equivalent of a bachelor's degree, the plain language of the labor certification states in H.8. that the Petitioner will not accept a combination of education and experience to satisfy the degree requirement.

On appeal, the Petitioner asserts that the Director erred in evaluating only the Beneficiary's degree, rather than "the U.S. equivalence of the overall education and credit hours earned by the Beneficiary." The Petitioner submits a new evaluation of the Beneficiary's academic credentials, from World Education Services (WES), dated May 17, 2023. The WES evaluation provides a course-by-course analysis stating that the Beneficiary completed 148.0 total undergraduate semester credits at the University [redacted] from 2003 to 2007. The evaluation concludes that the Beneficiary's *Ingeniero Tecnico*, awarded after a three-year program in computer systems, is equivalent to a U.S. bachelor's degree.

The Petitioner states that the Beneficiary earned "well above the normal 120 credit hours required for a U.S. bachelor's degree." In support of this assertion, the Petitioner submits printouts from the website of the U.S. Department of Education, International Affairs Office, dated February 2008, describing the U.S. education system for credit systems and bachelor's degrees. The description of credit systems states, "A typical bachelor's degree program of study on a semester calendar requires at least 120 credit hours to be earned by the student." The description of bachelor's degrees states, "The bachelor's degree may be defined as 'An award that normally requires at least 4 but not more than 5 years of full-time equivalent college-level work ... Also includes bachelor's degrees in which the normal 4 years of work are completed in 3 years.'"

The WES evaluation does not contain sufficient information to support its conclusions. The evaluation does not include the evaluator's name or credentials. Nor does it provide an analysis of how the course hours and grades listed on the Beneficiary's academic transcripts relate to the U.S. semester credits and grades described in the course-by-course analysis. The Petitioner does not provide an analysis of the university's grading scale or an analysis of how these relate to U.S. standards. Nor does the Petitioner submit evidence that the Beneficiary's *Ingeniero Tecnico* program was a four-year program compressed into three years, as described in the U.S. Department of Education description of bachelor's degrees. We may reject or afford lesser evidentiary weight to an advisory opinion that conflicts with other information or is "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Additionally, the evaluation on appeal does not adequately explain how or why this evaluator reached a different conclusion than the prior evaluation submitted noting that the course of study was only equivalent to three years of study.

A U.S. bachelor's degree generally requires four years of academic study. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). Upon review, we conclude that the Beneficiary's three-year *Ingeniero Tecnico* is less than a baccalaureate or foreign equivalent degree, as required by the plain language of the labor certification, and as claimed by the Beneficiary in part J. As noted in EDGE and in the Director's decision, the Beneficiary's *Ingeniero Tecnico* is equivalent to three years of academic study rather than to a degree as required by parts H.4 and H.14 of the labor certification. Thus, we concur with the Director that the Petitioner has not established that the Beneficiary meets the minimum requirements for the offered position.

Although not discussed by the Director, we note that the current record also does not support the Beneficiary's claimed qualifying experience. The offered position requires 24 months of experience in the offered position of software integration engineer. The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

- (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

With the filing the Petitioner submitted a letter dated June 8, 2020, from [redacted] on the letterhead of [redacted] Spain. [redacted] states that the Beneficiary “has worked for [the company] for ten years. He started as a software developer and rose to chief operating officer (COO).” The letter does not provide the dates of the Beneficiary's employment or the amount of time he spent in each role with the company. Nor does the letter describe the Beneficiary's duties in each of his various roles to sufficiently document that he possesses the required 24 months of experience as a software integration engineer. Further, the letter does not provide a title for [redacted] to identify how he is aware of the Beneficiary's employment and experience. Additionally, we note that the labor certification does not distinguish that the Beneficiary had multiple roles or positions with this company. The labor certification does not allow for experience in an alternate occupation, so that the exact dates and responsibilities of each position is important to determine whether the Beneficiary is qualified for the position offered.

Because the Petitioner was not on notice of these issues, this does not form the basis of our dismissal. However, the Petitioner must address and resolve the evidentiary deficiencies for his claimed qualifying experience in any further filings.

C. Beneficiary Does Not Qualify for Professional Classification

A petition for professional classification “must be accompanied by evidence that the [beneficiary] holds a United States baccalaureate degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(l)(3)(ii)(C).

As noted above, we conclude that the Beneficiary's three-year *Ingeniero Tecnico* is less than a baccalaureate or foreign equivalent degree, as required by 8 C.F.R. § 204.5(l)(3)(ii)(C) for classification as a professional. The evidence submitted on appeal, including the WES evaluation, does not support the Petitioner's claim that the Beneficiary's three-year *Ingeniero Tecnico* from the University [redacted] is equivalent to a U.S. bachelor's degree. Since the record does not show that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree, as required by 8 C.F.R. § 204.5(l)(3)(ii)(C), the Petitioner has also not established that the Beneficiary qualifies for classification as a professional.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifications for the offered job or the requested immigrant visa category. We will therefore affirm the petition's denial. 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.