



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

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

In Re: 27313611

Date: OCT. 16, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a real estate management and services company, seeks to permanently employ the Beneficiary as a software engineer. The company requests his classification under the third-preference immigrant visa category as a 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 of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary is qualified for the 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Immigration as a professional 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 noncitizen 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 noncitizen 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.

The term “professional” is defined in the regulation at 8 C.F.R. § 204.5(l)(2) as follows:

Professional means a qualified [noncitizen] who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.

In turn, the regulation at 8 C.F.R. § 204.5(k)(2) defines “profession” as “one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states that a petition for a professional must be accompanied by the following:

evidence that the [noncitizen] holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the [noncitizen] 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. To show that the [noncitizen] is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

In addition, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

Therefore, to establish eligibility for a professional classification, a petitioner must demonstrate that the occupation requires a United States baccalaureate degree or its foreign equivalent as the minimum requirement for entry, the beneficiary possesses a United States baccalaureate degree or its foreign equivalent required for entry into the occupation, and also that the beneficiary meets the requirements for the offered position as stated on the labor certification.

II. ANALYSIS

The priority date in this matter is August 5, 2021, the date on which DOL received the DOL ETA Form 9089, Application for Permanent Employment Certification, for processing. The ETA Form 9089 indicates that the minimum requirements for the position include a master’s degree in computer science, computer engineering, or information science, and at least 24 months of experience in the job offered or a closely related occupation. The ETA Form 9089 also states the following:

In lieu of this, [the Petitioner] will accept a Bachelor’s Degree in Computer Science, Computer Engineering, Information Science, or closely related field plus Five (5) years of experience in the job offered or closely related occupation. Will accept foreign equivalent degree. [The Petitioner] will accept any suitable combination of education, experience, or training.

On the ETA Form 9089, the Beneficiary described his highest education level achieved as a bachelor's degree in information science, received in 2015, from [redacted] Institute of Technologies." The record contains a copy of a document, written in English, stating that an entity identifying itself as [redacted] as the [redacted] graduate school of digital innovation," and also as the [redacted] Institute of Information Technology" awarded the Beneficiary "the degree of Graduate Diploma in Information Technology."¹ The diploma states that it was "issued" May 21, 2016, but that the Beneficiary is a member of the "Class of 2015." In turn, the record contains a document titled "Expertise Cycle Attestation," dated June 2022, from a signatory identifying himself in various places as both the "managing director" and "general director" of [redacted] stating that the Beneficiary "obtained his title on 16/12/2015." The record also contains two documents that appear to be academic transcripts written in a language other than English; however, the record does not contain an English translation of them. The record also contains an academic evaluation from Silvergate Evaluations Inc., stating that the Beneficiary "has attained the equivalent of a Bachelor's Degree in Information Science from an accredited institution of higher education in the United States . . . in 2015."

The Director denied the petition, concluding that the Beneficiary did not have five years of progressive, post-bachelor experience—to be combined with a bachelor's degree—as of the priority date. More specifically, the Director found that prior employers' letters, indicating that the Beneficiary worked for them before December 16, 2015, did not qualify toward the five years of experience that the ETA Form 9089 requires in addition to a qualifying bachelor's degree, in lieu of a qualifying master's degree combined with at least 24 months of experience in the occupation or a similar occupation. The Director did not specifically state how many years of qualifying experience—or the particular positions held—the Beneficiary accrued as of the priority date.

On appeal, the Petitioner asserts that the five years of experience required—when combined with a qualifying bachelor's degree—need not necessarily be progressive, post-bachelor experience and, thus, the Director erred by disregarding the Beneficiary's experience accrued before the date he completed his bachelor's degree. We agree that the ETA Form 9089 does not require the Beneficiary's five years of experience to be progressive, post-baccalaureate experience. Thus, the record does not support the denial of the petition based on the Director's interpretation of the experience requirements of the labor certification. We will therefore withdraw the Director's contrary finding.

However, the record does not establish the Beneficiary's eligibility for the benefit request. Specifically, it does not contain credible evidence that the Beneficiary completed a qualifying bachelor's degree as required by the ETA Form 9089 and the applicable third-preference professional regulations. "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." 8 C.F.R. § 204.5(I)(3)(ii)(C). In turn, "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." 8 C.F.R. § 103.2(b)(3). Although the record contains two

¹ We take administrative notice that [redacted] website states that it "issues a Qualification of Expert in Information Technology, registered by the National Commission for Professional Certification (CNCP) at Level 1 (Fr) and Level 7 (EU)," but it does not specifically indicate that [redacted] issues the equivalent of bachelor's or higher degrees. See [redacted] *Who We Are*, [https://www.\[redacted\]](https://www.[redacted])

documents that appear to be academic transcripts written in a language other than English, it does not contain an English translation of them. Therefore, we cannot meaningfully determine whether the transcripts support the Petitioner's claims. Further, the record does not establish that document from the signatory describing himself as both [redacted] "managing director" and "general director" is an official college or university record. 8 C.F.R. § 204.5(l)(3)(ii)(C). Further, the credentials evaluation does not indicate what educational documents, if any, the evaluator reviewed in making the determination that the Beneficiary has attained the equivalent of a Bachelor's Degree in Information Science from an accredited institution of higher education in the United States. The evaluation does not identify any courses the Beneficiary took, the number of years he attended college, or the number of college credits he received. USCIS may treat a credentials evaluation as an advisory opinion. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). If an evaluation is "is in any way questionable," however, USCIS may reject it or give it lesser evidentiary weight. *Id.*

Because the record does not contain credible evidence of the Beneficiary's bachelor's degree completion, it does not support the Director's conclusion that the record establishes as much. Accordingly, we withdraw the Director's statements in the decision to the extent that they indicate the record establishes the Beneficiary has completed a qualifying foreign equivalent bachelor's degree.

Based on the foregoing, we will remand the matter for the entry of a new decision. The Director may request any additional evidence considered pertinent to whether the Beneficiary is a member of the professions holding at least the foreign equivalent of a U.S. baccalaureate degree, and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.