



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

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

In Re: 24100416

Date: JAN. 5, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree)

The Petitioner, a private school offering bilingual educational services, seeks to permanently employ the Beneficiary as an “Early Childhood Education [ECE] Principal.” The school requests her classification under the second-preference, immigrant visa category as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary’s educational qualifications for the offered position or the requested immigrant visa category. On appeal, the Petitioner argues that the Director mischaracterized the Beneficiary’s foreign master’s degree.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We exercise de novo, appellate review. *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. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the permanent employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(k)(3)(i)(B).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, “adjustment of status” in the United States. *See* section 245(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

II. ANALYSIS

An advanced degree professional must have an “advanced degree” or its equivalent. Section 203(b)(2)(A) of the Act. The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate.” 8 C.F.R. § 204.5(k)(2).¹

A petitioner must also show that, by a petition’s priority date, a beneficiary met all DOL-certified job requirements listed on a labor certification. *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977). This petition’s priority date is November 19, 2020, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition’s priority date).

When assessing a beneficiary’s qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the offered position’s minimum requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *E.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that “DOL bears the burden of setting the *content* of the labor certification”) (emphasis in original).

A. The Required Education

The Petitioner’s labor certification states the minimum educational requirements of the offered position of ECE principal as a U.S. master’s degree, or a foreign equivalent degree, in educational administration.

On the labor certification, the Beneficiary attested that, by the petition’s priority date, a Spanish university awarded her a master’s degree in educational administration and quality management. The Petitioner submitted copies of her 2015 *master universitario* along with a *maestro* degree that another Spanish university previously issued her in 1996. The Petitioner also provided an independent, professional evaluation of the Beneficiary’s foreign educational credentials. The evaluation finds her three-year *maestro* equivalent to a U.S. bachelor’s degree in ECE and her one-year *master universitario* equivalent to a U.S. master’s degree in educational administration and quality management.

Without first issuing a request for additional evidence or notice of intent to deny, the Director denied the petition. The Director found that the Electronic Database of Global Education (EDGE), an online resource that U.S. federal judges have described as a reliable source of foreign educational

¹ A U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in a relevant specialty also equates to an advanced degree. 8 C.F.R. § 204.5(k)(2).

equivalencies, contradicts the Petitioner's evaluation.² A U.S. baccalaureate usually requires four years of college or university studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). A U.S. master's degree typically requires an additional two years of university. *E.g., Tisco Grp., Inc. v. Napolitano*, No. 09-cv-100072, 2010 WL 3464314, *4 (E.D. Mich. Aug. 30, 2010). The Director stated that EDGE describes a *maestro* as equivalent to three years of U.S. university and indicates that six months of Spanish graduate studies equate to one semester of U.S. graduate studies. The Director therefore found insufficient evidence of the Beneficiary's possession of a U.S. master's equivalency.

On appeal, the Petitioner submits evidence that the Beneficiary also obtained a 1999 university degree in special education. The Petitioner, however, does not assert that the Beneficiary's purported U.S. master's equivalency relies on the 1999 degree. Thus, disregarding the 1999 degree, the Beneficiary's combined educational documents indicate her completion of four years of university studies, which a U.S. baccalaureate, alone, usually requires. *See Matter of Shah*, 17 I&N Dec. at 245. The Director therefore had cause to question the Beneficiary's claimed U.S. master's equivalency and to consult EDGE.

As the Petitioner argues, however, the Director cited EDGE's description of an inapplicable, Spanish degree. The Beneficiary's educational documents identify her highest degree as a *master universitario*. The Director's decision points to EDGE's description of a "*titulo de master*." The Petitioner submits evidence from EDGE and other sources that a *master universitario* differs from a *titulo de master* and, unlike the latter credential, equates to a U.S. master's degree.³

Because the Director partially based his decision on incorrect information, we will remand the matter. On remand, the Director should review the Petitioner's evidence on appeal and request any further proof needed. The Director should then review the entire record and redetermine whether it demonstrates the Beneficiary's possession of a qualifying degree for the offered position and the requested immigrant visa category.

B. The Required Employment Experience

Although unaddressed by the Director, the record also does not establish the Beneficiary's qualifying employment experience for the offered position. The Petitioner's labor certification states that the offered position of ECE principal requires at least five years of experience as a "Bilingual (Dual Immersion) Elementary Teacher." The school indicated that it would not accept experience in a related occupation.

On the labor certification, the Beneficiary attested that, by the petition's priority date, she gained almost eight years of full-time, qualifying experience in the United States. She stated that the

² EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a group of more than 11,000 higher education professionals representing about 2,600 institutions in more than 40 countries. *See* AACRO, "Who we are," <https://www.aacrao.org/who-we-are>; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

³ If a petitioner received prior notice of an evidentiary deficiency and a reasonable opportunity to correct or explain it, we generally reject proof offered on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). As previously indicated, however, the Director did not notify the Petitioner before denying the petition. We therefore accept the school's evidence on appeal.

Petitioner employed her as a dual immersion elementary teacher from August 2012 through July 2020, when she began working for the school in the offered position.

An employer cannot rely on experience that a noncitizen gained with it unless they gained the experience in a substantially different position than the offered one, or the employer can demonstrate the impracticality of training a U.S. worker for the position. 20 C.F.R. § 656.17(i)(3). Based on the Petitioner's job-duty descriptions, the Beneficiary's current and former positions appear to substantially differ. *See* 20 C.F.R. § 656.17(i)(5)(ii) (stating that, for these purposes, positions substantially differ if they require performance of the same duties less than half the time).

The Beneficiary's resume, however, casts doubt on her positions and duties with the Petitioner. The resume lists her former and current positions with the school, as follows:

- "ECE Principal (2020 – Present);"
- "ECE Assistant Principal (2019-2020);"
- "Head of the Spanish Program (2014-Present);"
- "Spanish Student support teacher (2016-present);"
- "4th grade Spanish lead teacher (2014-2016);"
- "ECE Spanish lead teacher (2012-2014);" and
- "DELE test coordinator (2013 - present)."⁴

Also, contrary to the labor certification and a letter from the Petitioner's senior director of operations, the school states on appeal: "The Beneficiary has worked for the Petitioner since 2012 in a variety of capacities."

As previously indicated, the labor certification states that the offered position requires five years' experience as a "Bilingual (Dual Immersion) Elementary Teacher." The Petitioner indicated on the certification that it would not accept experience in any other occupation. The Beneficiary's resume does not identify any of her former or current positions with the school as a "Bilingual (Dual Immersion) Elementary Teacher." Thus, the positions on the resume cast doubt on her claimed, qualifying experience on the labor certification. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

Also, the Beneficiary's resume does not specify her duties in any of her purported positions with the Petitioner. Thus, if she performed duties of the offered position more than half of the time in one or more other positions with the school, the Petitioner could not rely on that experience. *See* 20 C.F.R. § 656.17(i)(5)(ii).

Further, on labor certifications, required experience - unless otherwise specified - means full-time experience, and part-time, qualifying experience equals less than full-time, qualifying experience. *See, e.g., Matter of 1 Grand Express*, 2014-PER-00783, **3-4 (BALCA Jan. 26, 2018) (equating a

⁴ The record does not explain "DELE." But online information indicates that the acronym stands for *Diplomas de Espanol como Lengua Extranjero*, official diplomas issued on behalf of the Spanish government to students who have demonstrated Spanish language proficiency. *See* DELE, <https://www.dele.org/>.

noncitizen's qualifying experience of 25 hours a week to 62.5% of full-time, 40-hour-a-week qualifying experience). The Beneficiary's resume indicates the Petitioner's employment of her in multiple, simultaneous positions since 2013, suggesting that she worked part-time in the concurrent positions. Thus, if the Beneficiary gained significant part-time qualifying experience, she may lack at least five years of full-time, qualifying experience as the offered position requires.

On remand, the Director should notify the Petitioner of the inconsistencies and potential evidentiary deficiencies regarding the Beneficiary's employment experience. The school must explain the positions listed on her resume. If the resume correctly lists separate jobs, the school must provide their duties and explain whether she worked part- or full-time in the positions. The Petitioner would also have to explain why the labor certification and a letter from the school's senior director of operations omit the jobs listed on the Beneficiary's resume.

If supported by the record, the Director may notify the Petitioner of any other potential denial grounds. The Director, however, must provide the school with a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

III. CONCLUSION

In finding insufficient evidence of the Beneficiary's educational qualifications for the offered position and the requested immigrant visa category, the Director relied on incorrect information. Also, the Petitioner has not demonstrated the Beneficiary's qualifying experience for the position.

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