



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

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

In Re: 20009575

Date: AUG. 2, 2022

Appeal of Nebraska Service Center Decision

I-140, Immigrant Petition for Professional

The Petitioner, a software, services, and Internet technologies company, seeks to employ the beneficiary as a software engineer. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. 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” 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. The Director found that the Beneficiary did not qualify for the job offered under the terms of the labor certification because he did not have five years of progressive post-baccalaureate experience as of the petition’s priority date.

On appeal, the Petitioner submits a brief and additional documentation, and contends that the date of the Beneficiary’s baccalaureate degree should be considered the date he received a provisional degree certificate demonstrating that the degree requirements were complete and approved, not the later date when the diploma itself was issued. Based on the earlier date of the provisional certificate, the Petitioner asserts that the Beneficiary had his baccalaureate degree long before the petition’s priority date, and therefore satisfied the minimum post-baccalaureate experience requirement of the labor certification and for classification as a professional.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

Immigration as a 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 employment of a noncitizen in the position will not harm wages and working conditions of U.S. workers with similar jobs. See section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). 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 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a certified position and a

requested immigrant visa category. Finally, if USCIS approves a petition, a designated noncitizen may 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.

Section 203(b)(3)(A)(ii) of the Act grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

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

A beneficiary must also have all the education, training, and experience specified on the labor certification as of the petition’s priority date. *See* 8 C.F.R. § 103.2(b)(l), (12); *Matter of Wing’s Tea House*, 16 I&N 158 (Act. Reg’l Comm’r 1977).

II. ANALYSIS

Here, the labor certification requires a U.S. master’s degree, or foreign equivalent degree, in computer science, engineering, mathematics, information systems, physics or related field and 36 months of experience in the offered job. The Petitioner indicated that a candidate could alternatively qualify for the offered position with a U.S. bachelor’s degree, or foreign equivalent degree, and 60 months of progressive post-baccalaureate software development experience formulating and analyzing software requirements utilizing C, C++, C# or a different high level programming language.

The Beneficiary possesses a four-year, eight-semester Bachelor of Engineering degree in the field of in Computer Science and Engineering from [redacted] University in [redacted] India. The Beneficiary also has over seven years of work experience in software engineering with [redacted] [redacted] in [redacted] India and [redacted] in [redacted] New Jersey, respectively. The record establishes that the Beneficiary’s degree is equivalent to a U.S. bachelor’s degree in a field of study identified as acceptable on the labor certification, and that his experience qualifies as progressive experience within the meaning of 8 C.F.R. § 204.5(k)(2).

In denying the petition, the Director concluded that the record did not establish the Beneficiary has the 60 months of progressive post-baccalaureate experience required by the terms of the labor certification. Specifically, the Director found that only experience gained after the Beneficiary was awarded his formal baccalaureate degree certificate could be considered qualifying.

The issue in this proceeding is *when* the Beneficiary received his degree from [redacted] University. More specifically, we will explore whether the degree dates from when the Beneficiary actually received the formal diploma, or earlier when he completed all of the requirements for the degree and received a provisional certificate indicating that his degree was approved.

The Beneficiary's priority date (when the labor certification was filed) is December 20, 2013. The Beneficiary was issued a provisional certificate on November 27, 2004, which stated that he passed his final examination in June 2004 and had completed all requirements for a bachelor of engineering degree in computer science and engineering at [redacted] University. The Beneficiary did not receive his formal diploma until February 26, 2010. Prior to working for the Petitioner, the Beneficiary was employed by [redacted] from July 15, 2005, to August 31, 2007, as a software design engineer, and by [redacted] from September 3, 2007, to May 3, 2013, as a technical lead.¹ Finding that February 26, 2010, was the date of the Beneficiary's degree, the Director concluded that the Beneficiary did not have five years of qualifying post-baccalaureate experience by the priority date, and was therefore ineligible for the job offered under the terms of the labor certification.

On appeal, the Petitioner maintains that the Beneficiary had the requisite bachelor's degree and more than five years of progressive post-baccalaureate experience required by the labor certification if we recognize that his degree dates from his completion of all degree requirements and the issuance of the provisional certificate. Calculated from this earlier date rather than the date of his formal diploma, the Beneficiary would have had the required bachelor's degree and five years of qualifying experience well before his employment with [redacted] ended in May 2013, and the priority date of December 20, 2013.

We conduct a case-specific analysis to determine whether, at the time a provisional degree certificate is issued, the individual has completed all substantive requirements to earn the degree and the university has approved the degree. We consider the individual nature of each university's or college's requirements for each program of study and each student's completion of those requirements. A petitioner will bear the burden to establish that a beneficiary's provisional degree certificate reflects that, at the time the certificate was issued, all of the substantive requirements for the degree were met and the degree was in fact approved by the responsible university body.²

Here, the record demonstrates that, by issuance of the provisional certificate on November 27, 2004, the Beneficiary had completed all substantive requirements and the university had in fact approved the degree. The record contains a copy of the Beneficiary's provisional certificate issued on November 27, 2004, which states that the Beneficiary "has qualified for the Degree of [Bachelor of Engineering in Computer Science and Engineering] of this University having passed the final examination held in June 2004." The record also contains other university documentation including a letter from the Controller of Examinations stating that the Beneficiary "met all the requirements for graduation for the Degree of Bachelor of Engineering in Computer Science and Engineering having passed the 8th Semester (Final) Examination, 2004" and a copy of the Beneficiary's transcript showing that he qualified for the Degree of Bachelor of Engineering in Computer Science and Engineering after completing eight semesters of coursework between December 2000, and June 2004.

¹ While not inherently implied by the job title, the Beneficiary's job duties as a technical lead for [redacted] included software development experience formulating and analyzing software requirements utilizing a high level programming language as required by the labor certification.

² Along with any other proffered evidence, petitioners must also submit a copy of a beneficiary's statement of marks or transcript to demonstrate years of study, and coursework completed, along with a copy of the provisional certificate. See 8 C.F.R. § 204.5(l)(3)(ii)(C) (requiring the submission of an official college or university record as evidence of a beneficiary's possession of a baccalaureate or foreign equivalent degree).

Finally, we have turned to information publicly available from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),³ and note that it accords with the Petitioner's claim and evidence. On the matter of provisional certificates issued by Indian universities, AACRAO EDGE states:

The *Provisional Degree Certificate* is evidence of completion of all requirements for the degree in question, the name of the degree and the date upon which it was approved by the responsible university governing body, and is comparable to an official U.S. academic transcript with a degree statement certifying completion of all requirements for the degree, the name of the degree and the date upon which it was approved by the academic senate at universities in the United States.⁴

The Petitioner maintains that the Beneficiary accrued the requisite post-degree experience if we recognize that his degree was conferred on the earlier date of his provisional certificate rather than from the date his formal diploma was issued. We may consider the provisional certificate to constitute the official academic record of a beneficiary's "degree" for purposes of calculating the five-year period of post-graduate experience, if a petitioner establishes that all of the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body at the time a provisional certificate was issued. *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017). Here, the record demonstrates that by issuance of the provisional certificate the Beneficiary had completed all substantive requirements of his degree and the university had in fact approved the degree. As such, we will consider experience gained after the date the provisional certificate was awarded as post-baccalaureate experience.

We further find that the record, including additional documentary evidence submitted on appeal, establishes that the Beneficiary, more likely than not, has the claimed experience. Considering this experience as qualifying experience, in conjunction with calculating the Beneficiary's experience from the date of his provisional certificate, we find that the record demonstrates the Beneficiary's possession of the 60 months of qualifying post-baccalaureate experience required by the labor certification.

III. CONCLUSION

The Petitioner has established by a preponderance of the evidence that the Beneficiary has the requisite education and experience to qualify for the job opportunity under the terms of the labor certification and for classification as a professional. Therefore, we will sustain the appeal.

ORDER: The appeal is sustained.

³ AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries." See <https://www.aacrao.org/who-we-are> (last visited Aug. 2, 2022). According to its registration page, EDGE "has been the leading US resource for evaluating foreign educational credentials for more than 15 years." See <https://www.aacrao.org/edge/about-edge> (last visited Aug. 2, 2022).

⁴ See *India: Provisional Degree Certificate*, AACRAO, <https://www.aacrao.org/edge/country/credentials/credential/india/provisional-degree-certificate> (last visited Aug. 2, 2022).