



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

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

In Re: 25516556

Date: APR. 4, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to employ the Beneficiary as a health services manager. 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 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 met the minimum requirements for the position as of the priority date. 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. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a noncitizen in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See id.* Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS) with the certified labor certification. *See* section 204 of the Act, 8 U.S.C. § 1154. Third, upon approval of the petition, a noncitizen may apply for an immigrant visa abroad, or if eligible, adjust status in the United States to lawful permanent resident. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

As noted above, the Director concluded that the record does not establish that the Beneficiary is qualified for the position. Specifically, the Director found that the record does not establish the Beneficiary held the required academic degree as of the priority date. For the reasons discussed below, the record does not establish that the Beneficiary is eligible for the classification sought.

The priority date in this matter is January 27, 2021, the date on which DOL received the DOL ETA Form 9089, Application for Permanent Employment Certification, for processing. Box H of the Form 9089 indicates that the position requires a minimum of a bachelor's degree in commerce or accounting, and that an alternate combination of education and experience may not substitute for a qualifying degree. Specifically, Box H.6. indicates that no experience is required for the offered job and box H.8 indicates that an alternate combination of education and experience is unacceptable. Furthermore, Box H.10 indicates that experience in an alternate occupation is not required.

We note that the Form 9089 indicates that the Beneficiary completed a bachelor's degree program at the University of [REDACTED] in 1990 in the field of commerce with a major in accounting. However, the record also contains a copy of an excerpt of a transcript from the University of [REDACTED] [REDACTED] indicating that the Beneficiary was enrolled in a bachelor's program in the field of commerce with a major in accounting between 1982-86. The excerpt, which omits three of the four pages of the transcript, reports: "Date of Graduation: XXXX," indicating that the Beneficiary did not graduate. In contrast, the record contains a copy of a summary of academic courses completed by the Beneficiary, indicating that he attended the University of [REDACTED] between 1978-82, not between 1982-86, to complete high school coursework, and that he completed primary coursework during the 1975-76 school year and "interim" coursework during the 1977-78 school year, both also at the University of [REDACTED]. The record does not reconcile the inconsistent information about the Beneficiary's attendance at the University of [REDACTED], nor does it establish that he earned a bachelor's degree as stated on the Form 9089.¹ The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Before denying the petition, the Director sent the Petitioner a request for evidence (RFE), seeking evidence that the Beneficiary had a bachelor's or higher degree in commerce or accounting as of the priority date, as required by the Form 9089. In response to the RFE, the Petitioner submitted a credentials evaluation stating that the Beneficiary had at least 12 years of experience, which the evaluation asserts is "the equivalent of at least a Bachelor of Business Administration degree from an accredited institution of higher education in the United States." However, as noted above, the

¹ If the Beneficiary did not, in fact, receive a bachelor's degree in the field of commerce with a major in accounting from the University of [REDACTED] in 1990 as certified on the ETA 9089, he may have committed a willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act. In order to support a finding of willful misrepresentation of a material fact, the record must show that the party procured or sought to procure a benefit under U.S. immigration laws, that they made a false representation, that the false representation was made willfully, that the false representation was material, and that the false representation was made to a U.S. government official. *See generally* 8 *USCIS Policy Manual* J.2(B), <https://www.uscis.gov/policy-manual>. This issue should be addressed in any future proceedings involving the Beneficiary.

Beneficiary indicated on the Form 9089 that he had the required bachelor's degree based on his education alone; he did not list any experience at part K of the Form 9089² and the offered job does not require any experience. Again, the Petitioner must resolve these inconsistencies. *Id.*

The Director concluded that the Beneficiary's 12 years of experience does not equate to a bachelor's degree, citing 8 C.F.R. § 204.5(l)(3)(ii)(C).³ Because the record does not establish the Beneficiary had a bachelor's or higher degree in commerce or accounting as of the priority date, as required by the Form 9089, the Director denied the petition. On appeal, the Petitioner asserts that USCIS' "3-for-1 rule . . . codified at 8 C.F.R. § 214.2(h)(4)(D)(5)" provides that 12 years of experience equates to a bachelor's degree, thereby satisfying the Form 9089 requirements. The Petitioner does not otherwise assert on appeal that the Beneficiary has actually received at least a bachelor's degree in commerce or accounting, as required by the Form 9089.

The Petitioner's reliance on 8 C.F.R. § 214.2(h)(4)(D)(5) is misplaced. First, 8 C.F.R. § 214.2(h)(4) and its subparts specifically apply to H-1B nonimmigrant petitions, not immigrant petitions. Relatedly, 8 C.F.R. § 214.2(h)(4)(D) specifically states that its subparts are "[f]or purposes of paragraph (h)(4)(iii)(C)(4) of this section," which addresses an H-1B beneficiary's qualifications, not for general application for other employment-based immigration classifications. Second, although 8 C.F.R. § 214.2(h)(4)(D)(5) states, "For purposes of determining equivalency to a baccalaureate degree in the [H-1B] specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the [noncitizen] lacks," a determination of academic equivalency by USCIS is discretionary and fact-specific, not mandatory in all circumstances. *See, e.g., Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988).

Moreover, as addressed above, the Form 9089 submitted in support of the Form I-140, Immigrant Petition for Alien Workers, in this case specifically disqualifies a combination of education and experience, or experience alone, from substituting for a minimum of a bachelor's degree in commerce or accounting. Therefore, even to the extent that the H-1B "3-for-1 rule" may apply to third-preference immigrant petitions, which it does not, the Form 9089 specifically precludes the Beneficiary's employment experience from satisfying the minimum academic requirements for the position.

Additionally, the credentials evaluation states that the Beneficiary has the equivalent of a "Bachelor of Business Administration" based on his work experience; it does not equate his experience to a bachelor's degree in commerce or accounting, which are the degree fields required by the labor certification. The Form 9089 does not provide for an alternate acceptable field of study. Finally, as previously noted, a petition for a professional must be accompanied by evidence that the Beneficiary

² The instructions to Part K requested the Beneficiary to list all jobs held during the past three years and any other experience that qualified him for the offered job.

³ The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

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. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

holds a United States baccalaureate degree or a foreign equivalent degree; here, the record does not contain an official college or university record showing the date a baccalaureate degree was awarded and the area of concentration of study. 8 C.F.R. § 204.5(l)(3)(ii)(C).

Based on the foregoing, the record does not establish that the Beneficiary received at least a bachelor's degree in commerce or accounting as of the priority date, as required by the Form 9089. The record also does not establish that the Beneficiary possessed at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university. Therefore, the record does not establish that the Beneficiary meets the minimum requirements for the position or is eligible for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

ORDER: The appeal is dismissed.