



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

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

In Re: 24227637

Date: AUG. 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) company, seeks to permanently employ the Beneficiary as a software developer. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a “skilled worker.” *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a prospective U.S. employer to sponsor a noncitizen for permanent residence to work in a job requiring at least two years of training or employment experience. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the offered position’s job requirements, the Petitioner did not demonstrate the Beneficiary’s possession of a bachelor’s degree. On appeal, the Petitioner contends that the Director improperly discounted evidence of the Beneficiary’s qualifying degree and misapplied case law.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Petitioner demonstrated the Beneficiary’s possession of a bachelor’s degree in acceptable field of study. We will therefore sustain the appeal.

I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and permanent employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. 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). 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(l)(3)(ii)(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 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A petition must include evidence that a beneficiary met all DOL-certified job requirements of an offered position by a petition’s priority date. 8 C.F.R. § 204.5(l)(3)((ii)(B); *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977). This petition’s priority date is June 15, 2021, the date DOL accepted the Petitioner’s labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition’s priority date).

The Petitioner’s labor certification states the minimum requirements of the offered position of software developer as a U.S. bachelor’s degree or a “foreign educational equivalent” in IT or computer science, plus five years of employment experience “in the job offered.” The labor certification states that the company will not accept an alternate combination of education and experience, or experience in an alternate occupation.

On the labor certification, the Beneficiary attested that, by the petition’s 2021 priority date, an Indian university awarded him a bachelor’s degree in computer science. The Petitioner submitted evidence that, in 1993, the school issued him a three-year bachelor of science degree.

Noting the Beneficiary’s possession of a three-year degree and the usual issuance of U.S. bachelor’s degrees after four years of college or university studies, *see Matter of Shah*, 17 I&N Dec. 244, 245 (Reg’l Comm’r 1977), the Director mailed the Petitioner a request for additional evidence (RFE) of the Beneficiary’s educational qualifications. The company’s RFE response included copies of a diploma, provisional degree certificate, marks cards, and a university letter indicating that, in 2003, another Indian university awarded the Beneficiary a two-year, master of science degree in IT and an independent, professional evaluation finding the master’s degree equivalent to a U.S. bachelor of science degree in IT. Thus, the Petitioner asserted the Beneficiary’s educational qualifications for the offered position.

The Director, however, found the additional evidence insufficient to demonstrate the Beneficiary’s possession of the master’s degree. Citing case law, the Director stated that USCIS cannot: “consider any evidence of the beneficiary[’s] eligibility after the petitioner filed Form I-140;” “consider facts that come into being only subsequent to the filing of a petition;” or approve a petition “at a future date after the petitioner becomes eligible under a new set of facts.” *See Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm’r 1998) (citations omitted).

As the Petitioner argues, however, *Izummi*’s prohibitions bar consideration of qualifications attained after a petition’s filing or priority date. Copies of the Beneficiary’s diploma, provisional degree certificate, marks cards, and university letter show his receipt of the master’s degree in 2003, before the petition’s filing in 2022 and its 2021 priority date. Nor is the master’s degree part of “a new set of facts.” *See Matter of Izummi*, 22 I&N Dec. at 175. Unlike in *Izummi*, the Petitioner did not change facts that existed before the petition’s filing. Rather, the Petitioner submitted additional evidence of the Beneficiary’s 2003 receipt of a master’s degree, a fact that existed before the petition’s 2022 filing.

The Director erred in refusing to consider the Beneficiary's master's degree. A preponderance of the evidence demonstrates the Beneficiary's receipt of the degree before the petition's priority date and the credential's equivalency to a U.S. baccalaureate in the acceptable field of IT. The Petitioner therefore has demonstrated the Beneficiary's educational qualifications for the offered position.

ORDER: The appeal is sustained.