



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

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

In Re: 26807979

Date: JULY 18, 2023

Motion on Administrative Appeals Office (AAO) Decision

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

The Petitioner, a seller and trader of industrial power generators, seeks to permanently employ the Beneficiary as a market research analyst. 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.

After first approving the petition, the Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that, contrary to the offered position's job requirements on the accompanying certification from the U.S. Department of Labor (DOL), the Petitioner did not demonstrate the Beneficiary's possession of a U.S. bachelor's degree. The Petitioner appealed the revocation, asserting, among other things, that the Petitioner meets the educational qualifications for the offered position. We dismissed the appeal, concluding that the Petitioner did not demonstrate that the Beneficiary possessed the required education as of the priority date. We also indicated that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered position as of the priority date.¹ The matter is before us again on a combined motion to reopen and motion to reconsider.

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). Upon review, we will grant the motion to reopen, and we will remand the matter to the Director for entry of a new decision. The motion to reconsider is moot.

¹ While we did not dismiss the appeal on this basis, we stated, in part:

In any future filings in this matter, the Petitioner must provide a letter from the Beneficiary's employer sufficiently describing the Beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The company must also resolve the inconsistencies between the employer's letter and the labor certification with independent, objective evidence of the Beneficiary's claimed qualifications. *See Matter of Ho*, 19 I&N Dec. at 591.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a “new fact” to have been previously unavailable or undiscoverable. Instead, “new facts” are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We do not consider new facts or evidence in a motion to reconsider.

II. ANALYSIS

We incorporate by reference our summary of the factual and procedural history of this matter, and applicable law, as described in our appeal dismissal decision. As a brief summation, the priority date in this matter is August 18, 2021, the date DOL accepted the labor certification accompanying the Form I-140, Immigrant Petition for Alien Workers. The labor certification states the minimum requirements of the offered position of market research analyst as a U.S. bachelor’s degree in business administration and two years of experience in the job offered. The labor certification indicates the Petitioner would not accept either a foreign equivalent of a U.S. baccalaureate degree or experience in a related occupation.²

On motion, the Petitioner submits a brief signed by counsel, a copy of our prior decision, and the following documents: a copy of the International Educational Equivalency Evaluation Services’ evaluation of the Beneficiary’s educational credentials, dated August 2022; and a one-page letter, dated February 2023, from the Beneficiary’s prior employer. The educational credential evaluation concludes that the Beneficiary’s Bachelor of Arts in Business Studies with Systems Practice, awarded by the [] University, Lebanon Branch, through an [] University, United Kingdom, program in 2012, is “the equivalent of a Bachelor’s degree in Business Administration awarded by a regionally accredited university in the United States.” In turn, the letter from the Beneficiary’s prior employer generally states that he “developed skills in all areas of our marketing functions including market research” and that his “primary duties were to conduct market research for optimum use of resources to expand our markets in the Middle East,” noting when he was given two job titles, respectively.

Because the new documentary evidence submitted on motion addresses facts that are material to our basis for dismissing the appeal, we will grant the motion to reopen. We will remand the matter to the Director to review the evidence in the first instance and to determine whether the Petitioner has met its burden of establishing eligibility for the requested benefit, including whether the Beneficiary meets

² On motion, the Petitioner asserts that its advertisements for the offered position did not limit applicants to those holding only U.S. bachelor’s degrees and that its intent was to accept applicants with foreign or U.S. bachelor’s degrees.

the education and experience requirements of the position offered. *See* 8 C.F.R. § 103.5(a)(2).³ The motion to reconsider is moot.

ORDER: The motion to reopen is granted, and the matter is remanded for entry of a new decision consistent with the foregoing analysis.

³ The Petitioner repeats on motion its claim regarding ineffective assistance of counsel. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). We note that the Petitioner's submission, on motion, of the Beneficiary's educational credential evaluation appears to respond to our *Lozada* discussion in the appeal decision. Because the evaluation was submitted for the first time on motion and we are remanding the matter to the Director to review the evaluation, the Director may address the Petitioner's *Lozada* claim on remand.