



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

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

In Re: 23100801

Date: MAY 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a digital design development company, seeks to employ the Beneficiary as an accounting officer. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *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.

The Director of the Texas Service Center denied the petition, concluding that the labor certification does not support the requested professional classification. 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).¹ *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, 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* section 212(a)(5)(A)(i)(I)-(II) of the Act. 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, if USCIS approves the petition, the noncitizen applies 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.

¹ The date the DOL accepted the labor certification for processing – in this case, September 12, 2019 – is called the “priority date.” *See* 8 C.F.R. § 204.5(d).

Under section 203(b)(3)(A)(ii) of the Act, EB-3 classification may be granted to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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.

In addition, 8 C.F.R. § 204.5(l)(3)(i) states that the job offer portion of the labor certification underlying a petition for a professional “must demonstrate that the job requires the minimum of a baccalaureate degree.”

II. ANALYSIS

In its Form I-140, Immigrant Petition for Alien Workers, the Petitioner checked the box at part 2.1.e. which specifies that the petition is being filed for “[a] professional (at a minimum, possessing a bachelor’s degree or a foreign degree equivalent to a U.S. bachelor’s degree).”

As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was certified by the DOL. Section H of the labor certification stated the following with respect to the minimum requirements for the job of accounting officer:

4.	Education: Minimum level required:	Bachelor’s degree
4-B.	Major Field of Study:	Business Administration
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	How long?	12 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	Yes
8-A.	Alternate level of education required?	None
8-C.	Indicate the number of years experience acceptable in Question 8.	3
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	How long?	12 months
10-B.	Job title of acceptable alternate occupation	Job duties or experience in related accounting or finance position in Colombia

In addition, box H.14 of the labor certification – Specific skills or other requirements – states the following:

Experience in part H-8.C must be in job duties or in related accounting or finance position with at least 1 year experience in accounting/finance position in Columbia.

In section J of the labor certification the Beneficiary stated that they earned a bachelor's degree in business administration at [] Universidad [] Columbia in 2011. They submitted copies of a diploma and transcripts showing that the Beneficiary was awarded a business administrator diploma (Titulo de Administradora de Empresas) from the above-named university on November 26, 2011, following completion of a four-year academic program in the years 2007-2011.

The Director denied the petition on the ground that the minimum job requirements in part H of the labor certification are less than a U.S. baccalaureate or foreign equivalent degree. After noting the specifications at H.4 and H.6 of the labor certification that a bachelor's degree and 12 months of experience were required, the Director quoted the language at H.8 and H.14 indicating that the Petitioner would accept, in the alternative, three years of experience "in job duties or in related accounting or finance position with at least 1 year experience in accounting/finance position in Columbia." Based on this language indicating that the Petitioner would accept less than a full baccalaureate degree, the Director concluded that the offered position did not qualify as a profession and the labor certification did not support the requested classification of the Beneficiary as an EB-3 professional.

On appeal, the Petitioner asserts that the Beneficiary has a four-year bachelor's degree from a Colombian university which has been equated to a U.S. bachelor's degree in business administration from an accredited U.S. college or university. The issue on appeal, however, is not whether the Beneficiary meets the minimum educational requirements for the offered position of accounting officer. The issue is whether the labor certification requires at least a U.S. baccalaureate degree or a foreign equivalent degree in order to qualify for the job.

In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Our interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the labor certification application form. *Id.* at 834.

The Petitioner asserts on appeal that its minimum requirements for the position are a bachelor's degree and 12 months of experience, and claims its decision to include the alternate set of requirements of no education and three years of experience was intended to "open the position to further U.S. workers," noting that it "was willing to consider other related qualifications." While the Petitioner's assertions are noted, the labor certification nevertheless states that a candidate may qualify for the job of

accounting officer with less than a bachelor's degree. Boxes H.8 and H.14 of the labor certification set forth alternative requirements whereby an applicant may qualify for the job with no education and three years of experience. Thus, the "plain language" of the labor certification unambiguously states that the minimum educational requirement for the offered position is less than a U.S. bachelor's degree or a foreign equivalent degree, contrary to the Petitioner's assertions.

The labor certification in this case does not support the requested professional classification sought in the Form I-140 petition since it allows an applicant to qualify for the job with less than a baccalaureate degree. Accordingly, the petition cannot be approved.

ORDER: The appeal is dismissed.