



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

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

In Re: 21182345

Date: JUL. 26, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for a Professional

The Petitioner, a software development and information technology solutions company, seeks to employ the Beneficiary as a software developer/systems analyst. It requests classification of the Beneficiary under the third-preference, immigrant visa category for professionals. *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 Nebraska Service Center denied the petition, concluding that the minimum education requirements for the position, as described on the labor certification, do not meet the requirements of the requested classification.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The AAO reviews the questions in this matter *de novo*. *See 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

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 won't 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. 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.

¹ The Director's decision did not address the Beneficiary's qualifications. The sole issue on appeal is whether the minimum education requirements indicated on the labor certification support the requested classification.

II. ANALYSIS

To be eligible for professional classification, the labor certification must require, at a minimum, a U.S. bachelor's degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(i). For the reasons discussed below, we agree with the Director that the labor certification does not support the requested classification.²

Upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings” provided the tribunal's order reflects individualized attention to the case).

On appeal, the Petitioner requests that we examine the language exactly as it appears on the labor certification and notes that Section H.9 of the labor certification stated that a foreign educational equivalent is acceptable. The Petitioner asserts that the Beneficiary qualifies for the professional classification by virtue of a foreign education equivalent to a U.S. baccalaureate degree and more than 12 years experience in computer information systems and related areas.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in computer information systems from [redacted] University, [redacted] in [redacted] India, completed in 1997. As evidence of this credential the Petitioner submitted copies of a diploma and a consolidated statement of marks showing that it was awarded after completion of a three-year program. In addition, the record includes an academic equivalency evaluation from [redacted] from [redacted] University asserting that the Beneficiary's academic and professional work experience is equivalent to a four-year bachelor's degree in computer information systems from an accredited U.S. college or university.

In *Snapnames.com, Inc. v. Michael Chertoff*, No. 06-65-MO, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158, 2008 WL 9398947 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree). Thus, for purposes of the requested immigrant visa category, a foreign equivalent of a U.S. bachelor's degree must constitute a single degree.

Because a plain reading of the language in Part H, Box 14 and the Petitioner's own statements on appeal clearly indicate it would accept a combination of education and experience to meet a bachelor's degree equivalency, the labor certification does not support the requested classification. The allowance of “any

² On the Form I-140, Immigrant Petition for Alien Worker, 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).”

suitable combination of education, progressive experience or training is acceptable” to satisfy the bachelor’s degree requirement would result in the “equivalent” of a bachelor’s degree rather than a “foreign equivalent degree.” *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining “equivalence to completion of a United States baccalaureate or higher degree” for purposes of H-1B classification.) Where *combinations of education or experience may equate to baccalaureate degrees*, the Act and regulations state so explicitly. *See* section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C) (allowing H-1B workers to have “experience in the specialty equivalent to the completion of such [bachelor’s] degree”); *see also* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) (H-1B workers may have “education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate ... degree”). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

Neither the Act nor USCIS regulations allow a position to be classified as a professional position if the minimum educational requirement can be met with anything other than a single academic degree. Therefore, the provided labor certification does not support the requested classification of professional under section 203(b)(3) of the Act.

Further, the Petitioner asserts on appeal that USCIS refused to reclassify the requested eligibility category from a professional to a skilled worker. We are not able to change the requested preference classification on appeal because the Director has already issued a decision on the petition. At the USCIS website under petition filing and processing procedures for Form I-140, the agency provides instructions on how to correct the visa category selected in Part 2 of Form I-140. The guidance states that the Petitioner must review for accuracy the receipt notice that indicates the visa category requested on Part 2 of Form I-140. If the category is not correct, the Petitioner must immediately call the USCIS contact center to request a change in the visa classification before the agency makes a decision on the form. The instructions also indicate that if the Petitioner requests a change in visa classification to correct a clerical error, USCIS will make the final determination about whether to change the visa classification based on everything in the case. Finally, the instructions state that a visa category cannot be changed if a decision has been made on the Form I-140. *See* USCIS website, Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Workers, <https://www.uscis.gov/forms/all-forms/petition-filing-and-processing-procedures-for-form-i-140-immigrant-petition-for-alien-workers#Requesting>. There is no indication the Petitioner followed any of these steps. In any event, we are not able to change the requested preference classification on appeal because the Director has already issued a decision on the petition.

III. CONCLUSION

The Petitioner’s allowance of a combination of a degree and experience to meet the bachelor’s degree equivalency prohibits us from concluding that the labor certification supports a request for professional classification under section 203(b)(3) of the Act.

ORDER: The appeal is dismissed.