On May 23, 2017, U.S. Citizenship and Immigration Services (USCIS) issued a policy memorandum adopting the Administrative Appeals Office’s (AAO) decision in the case Matter of A-T-Inc. The adopted decision establishes binding policy guidance for USCIS adjudicators on the issue of when a degree-conferring institution must be accredited for purposes of qualifying for the H-1B advanced-degree exemption (i.e., the “master’s cap” exemption). Specifically, the adopted decision provides clarification that the university or college where the beneficiary obtained his or her advanced degree must be accredited at the time the degree was earned.

H-1B Master’s Cap and Accreditation

To provide context, under the annual H-1B cap, the government may issue up to 65,000 new H-1B visas for individuals who will be employed in “specialty occupation” roles inside the United States. Under Section 214(g)(5)(c) of the Immigration and Nationality Act of 1965 (INA), an additional 20,000 H-1B visas are available to those foreign nationals who have earned a master’s degree from a “United States institute of higher education.” The INA defines an “institute of higher education” as a public or nonprofit education institution that “is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the [U.S. Secretary of Education].” The INA does not clarify when the status of accreditation or pre-accreditation must occur relative to the time the degree is earned or the H-1B cap petition is adjudicated, and this was the issue at hand in Matter of A-T-Inc.

The AAO’s Decision

In Matter of A-T-Inc., the foreign national beneficiary of the H-1B petition filed under the master’s cap exemption had earned his master’s degree in 2010. At the time the degree was earned, the university was not accredited. However, by the time the H-1B cap petition was filed in 2013, the university had gained accreditation. In adjudicating the case, USCIS denied the petition on the grounds that the university must be accredited at the time the degree is earned in order to qualify for the master’s cap.

The sponsoring employer appealed USCIS’s decision to the AAO, arguing that the accreditation status at the time the degree is issued should not be controlling, but rather, USCIS should look to whether the university was accredited at the time of adjudicating the H-1B petition. The AAO disagreed with the employer and clarified...
that for purposes of qualifying for the master’s cap, the university’s accreditation must be established at the time the degree is earned, not when adjudicating the H-1B petition.

**USCIS Adopts the AAO’s Decision**

USCIS based its decision to adopt the AAO’s recent decision on several key reasons. First, USCIS aims to ensure the quality of an individual’s education by requiring beneficiaries to earn their degrees from institutions that are already accredited. By doing so, USCIS certifies that, from the outset, the degree-conferring institution qualifies to offer the advanced degrees necessary to merit a master’s cap exemption. Evaluating whether a degree-conferring institution is qualified at the time of adjudication does not advance the education quality in scenarios where accreditation occurs long after a degree is conferred.

USCIS also notes that adopting the AAO’s decision will create consistent and prudent results. A positive adjudication of an H-1B master’s cap exemption case based on an institution’s recent accreditation where an individual earned his or her advanced degree prior to the institution having received the accreditation does not accurately reflect the quality of the individual’s education. Conversely, a negative adjudication could also occur where an individual could become ineligible for the H-1B master’s cap exemption due to an institution losing accreditation long after the individual earned a once-qualifying degree. The result in either scenario would have no correlation to whether the education the individual received was of proper quality to merit qualification for the H-1B master’s cap exemption.

USCIS states that without adopting this decision, uncertainty for graduate students seeking immigrant benefits would continue. Under the new policy, an individual who receives an advanced degree from an accredited institution remains qualified for the master’s cap exemption regardless of whether the institution later loses its accreditation status or closes.

By removing some of the ambiguity that has occurred in previous years surrounding the issue of institution accreditation for cap applications, this newly-adopted decision should help employers plan more reliably when considering filing an H-1B petition relying upon a master’s cap exemption.