



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **APR 03 2014** OFFICE: NEBRASKA SERVICE CENTER [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as Member of Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[Redacted]

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the director) denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a product development business. It seeks to employ the beneficiary permanently in the United States as a Computer Systems Analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). The priority date of the petition is March 27, 2012, the date the labor certification was accepted for processing by DOL. See 8 C.F.R. § 204.5(d). The director denied the petition after concluding that record did not establish that the beneficiary had met the minimum educational requirements of the labor certification as of the March 27, 2012 priority date.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹ The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact.

The issue before the AAO is whether the beneficiary had the education required by the labor certification as of the March 27, 2012 priority date.² As discussed below, the petitioner has failed to submit sufficient evidence to establish the beneficiary's degree as the foreign equivalent of a Master's degree in Computer Science issued by a regionally accredited U.S. college or university.

The petitioner is seeking classification of the beneficiary as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), grants preference classification to members of the professions holding advanced degrees or their equivalent whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as:

[a]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

² In a Request for Evidence (RFE) issued on January 2, 2014, the AAO sought evidence relating to the nature of the beneficiary's degree, the validity of his degree certificates and the petitioner's ability to pay the proffered wage. The petitioner's March 5, 2014 response resolved the issues of its ability to pay and the beneficiary's degree certificates.

To establish that a beneficiary is qualified to perform the duties of an offered position, a petitioner must demonstrate that the beneficiary has met all of the requirements set forth in the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, United States Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the present case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's.
- H.4-B. Major field of study: Computer Science.
- H.5. Training: None required.
- H.6. Experience in the job offered: Required
- H.6-A. Number of months experience required: 6 months.
- H.7. Alternate field of study: Accepted.
- H.7-A. Major field of study: Engineering.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: Accepted.
- H.10-A. Number of months experience in alternate occupation: 6 months.
- H.10-B. Job title of alternate occupation: Senior Systems Analyst/Consultant.
- H.14. Specific skills or other requirements: Six (6) months experience must have included: (1) J2EE; (2) JAVA; (3) ASP.NET; (4) PL/SQL; and (5) ORACLE.

In reference to Item H6 and Item H10. experience herein is inclusive in Item H6 and Item H10. Employer is willing to accept any suitable combination of work experience, education, or training that is equivalent to the minimum requirements of the position. SOC Code: 15-1132, Software Developers, Applications.

Accordingly, the terms of the labor certification require that, as of the March 27, 2012 priority date, the beneficiary hold a U.S. Master's degree in Computer Science or Engineering, or a foreign equivalent degree, and have six months as a Computer Systems Analyst or a Senior Systems Analyst/Consultant, with experience in J2EE, JAVA, ASP.NET, PL/SQL and ORACLE.³

³ In its January 2, 2014 RFE, the AAO informed the petitioner that if it intended the labor certification to allow for an alternative to the above Master's degree, it should submit evidence of this intent as it was expressed during the labor certification process to DOL. In its March 5, 2014

The record includes copies of the beneficiary's Master of Computer Applications (MCA) degree from the Faculty of Engineering at [REDACTED], which the record indicates he completed as of December 8, 1998 and his Bachelor of Science from [REDACTED] completed as of June 23, 1995. Academic transcripts accompany the degree certificates.

To establish the beneficiary's degree as the foreign equivalent of a Master's degree in Computer Science, the petitioner has submitted five evaluations of the beneficiary's academic credentials, each of which finds the beneficiary's MCA to be the foreign equivalent of a Master of Science in Computer Science.

A September 30, 2011 evaluation written by [REDACTED] concludes that "based on the reputation of the academic programs offered by [REDACTED], the number of years of coursework and research, the nature of the coursework and research, the grades attained in the courses, and the hours of academic coursework and research . . . [the beneficiary] attained the foreign equivalent degree of a Master of Science Degree in Computer Science from an accredited US college or university." Professor [REDACTED], in a March 11, 2013 report, similarly concludes that the beneficiary's three-year MCA program, which he completed after being awarded a three-year Bachelor of Science, with concentrations in computer science, mathematics and physics, is "the single-source foreign equivalent of a U.S. Master of Science Degree in Computer Science."

In an August 19, 2013 academic evaluation, [REDACTED] states that he has a "long standing policy of equating the MCA (Master of Computer Applications) to a US Master's degree in Computer Science" and that the coursework completed by the beneficiary for his Master's degree "go[es] beyond the scope of what one would be taught in a graduate level program in an *Applied* Computing subject."

A fourth evaluation, dated February 21, 2014, has been prepared by [REDACTED]. [REDACTED] indicates that he has reviewed the curriculum completed by the beneficiary for his MCA and has found his coursework comparable to the courses found in Masters programs in Computer Science and related fields at many accredited U.S. colleges and universities. [REDACTED] notes that the graduate-level thesis project completed by the beneficiary prior to receiving his MCA is proof that he was enrolled in a graduate-level program in Computer Science concerned with advanced academic topics beyond the bachelor's level. [REDACTED] concludes that "based on the reputation of [REDACTED], the number of years of coursework and research, the nature of the coursework and research, the grades attained in the courses, and the views of AACRAO EDGE,"⁴

response, the petitioner reiterated that the minimum requirement for the offered position is a Master's degree in Computer Science or Engineering, or a foreign equivalent degree.

⁴ The Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).

the beneficiary has the foreign equivalent degree of a two-year Master of Science Degree in Computer Science from an accredited university in the United States.”

A fifth evaluation from [REDACTED], dated February 24, 2014, finds the beneficiary’s MCA to be a unique and prestigious credential because of “its three-year graduate duration.” Professor [REDACTED] further states that in the Indian educational system, the field of computer applications is considered “an elevated, or more specialized, sub-discipline of Computer Science.” In his analysis of the beneficiary’s coursework, Professor [REDACTED] compares the courses completed by the beneficiary for his MCA to those found in Masters’ programs in Computer Science in the United States, submitting printouts of the courses offered in graduate programs in computer science at [REDACTED]. He maintains that the coursework completed by the beneficiary would comprise the curricula of a U.S. Master’s program in Computer Science.

The AAO has reviewed the degree programs at [REDACTED]. The review does not persuade the AAO that the beneficiary has the equivalent of a U.S. Master of Computer Science. The University’s College of Engineering, from which the beneficiary earned his Master’s degree, also offers degrees in Computer Science, e.g., a Master of Technology in Computer Science & Technology (CST) and Masters of Technology degrees in CST with specializations in Computer Engineering, Information Technology, Bio-informatics and Computer Networks. These degrees, although not the equivalent of U.S. master’s degrees, nevertheless, appear to indicate that [REDACTED] distinguishes between the fields of computer science and computer applications. Although the AAO notes that [REDACTED] reports that [REDACTED] awards a “Master of Computer Science (MCA),” this evidence does not establish that the university considers an MCA to be a degree in computer science. To resolve these concerns, the AAO, in its January 2, 2014 RFE, requested that the petitioner submit evidence that [REDACTED] considered the beneficiary’s MCA to be a degree in computer science, indicating that such evidence could take the form of a certified statement to this effect from an [REDACTED] official.

In response to the January 2, 2014 RFE, the petitioner provided the aforementioned evaluations from [REDACTED] and [REDACTED], both of which, as previously indicated, find the beneficiary’s MCA to be equivalent to a U.S. Master’s degree in computer science. For the reasons discussed below, however, these evaluations do not appear to reflect opinions and findings that were independently reached by their authors. As such, they will be given little evidentiary weight.

A reading of the evaluations finds numerous passages where the language used by [REDACTED] and [REDACTED] is virtually identical. Although the structure of their respective evaluations may differ, [REDACTED] observations and findings repeatedly use the same language. An example of the similarities in the reports’ language includes [REDACTED]’s conclusion regarding the beneficiary’s completion of a master’s thesis, which he finds “confirms that [the beneficiary’s] program was indeed a graduate-level program in Computer Science concerned

with advanced academic topics beyond the bachelor's level" (at page 3). In his consideration of the beneficiary's master's thesis, [REDACTED] also finds that it "confirms that [the beneficiary's] Master of Computer Applications program was indeed a graduate-level program in Computer Science concerned with advanced academic topics beyond the bachelor's level" (at page 3). In rebutting EDGE, [REDACTED] states that in indicating that an MCA should be viewed as a degree in computer applications, EDGE "is both wrong and inconsistent with the practice of the EDGE database only to provide equivalency recommendations for the level of academic study and not for the field of study" (page 4). This exact wording appears in [REDACTED] own discussion of EDGE (at page 7). In yet another example of the similar language that appears in both reports, [REDACTED] states:

As a U.S. professor in the computer field, I can confirm that virtually no accredited U.S. college or university offers a master's program in "Computer Application." While this major exists in India, it simply does not exist in the United States and "Computer Applications" carries a different connotation in the Indian educational system than it does in the US educational system.

(at page 4). This identical statement is found in [REDACTED] evaluation (at page 6).

The numerous instances of virtually identical language identified throughout the evaluations raise doubts regarding the independence of the findings and conclusions offered by [REDACTED] and [REDACTED]. The AAO additionally notes that these evaluations also appear to use language originally found in the March 11, 2013 evaluation prepared by Professor [REDACTED]. Doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the AAO will not accept either [REDACTED] evaluation as an expert opinion that the beneficiary's MCA is a computer science degree. USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

The three evaluations previously submitted by the petitioner in support of the visa petition also fail to convince the AAO that the beneficiary's MCA is a degree in Computer Science. [REDACTED] simply finds that the beneficiary's MCA is the equivalent of a U.S. Master of Science in Computer Science. Professors [REDACTED] maintain that EDGE is wrong in finding that the [REDACTED] is comparable to a U.S. Master's degree in Computer Application and that a Master's degree in Computer Application is essentially limited to India and does not exist in the United States.

Although [REDACTED] has also reviewed the curriculum completed by the beneficiary and found it to be comparable to the courses found in Masters' programs in Computer Science at accredited U.S. colleges and universities, his analysis is not persuasive.

In support of his assertion, Professor [REDACTED] submits copies of a listing of the computer science courses taught at [REDACTED] the curriculum for the Master's Program in Computer Science at the [REDACTED] and the schedule for graduate courses offered in Computer Science at [REDACTED] University. This information, however, is insufficient to establish that the curriculum completed by the beneficiary for his MCA is comparable to that completed for U.S. Masters' degrees in Computer Science. The listing of Computer Science courses at [REDACTED] and the schedule of the graduate courses in Computer Science offered by [REDACTED] provide no information concerning the requirements for their Masters' degrees in Computer Science. Moreover, [REDACTED] offer Masters' degrees in fields of computer-related study other than Computer Science, e.g., Information Technology and Computer Networking,⁶ and the submitted listings appear to identify courses that would support several degree programs, not just that in Computer Science. As a result, this material does not demonstrate that the academic requirements completed by the beneficiary are those generally required by U.S. Masters' programs in Computer Science. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO does, however, note the overall similarity between the content of the beneficiary's coursework and the submitted curriculum for the Master's program in Computer Science at the [REDACTED] which describes itself as having a "strong emphasis in applied topics."⁷ Nevertheless, the AAO does not find the common elements in the curriculum completed by the beneficiary and that of the Master's program in Computer Science at the [REDACTED] to establish that an Indian MCA is comparable to a U.S. Master of Science in Computer Science. The similarity between the beneficiary's coursework and a single U.S. Master's program in Computer Science is not sufficient to demonstrate that the beneficiary has completed the curricula generally taught in graduate Computer Science programs at U.S. universities.

Although the AAO acknowledges the findings of the above evaluations, the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), has found an Indian MCA degree to "[represent] attainment of a level of education comparable to a master's degree in the United States," but that this degree is "[c]omparable to a degree in computer application, not computer science."

The AAO does not find EDGE's use of the term "computer application" to refer to a specific degree program but to computer fields that involve the practical application of theoretical computer knowledge. Accordingly, the AAO finds EDGE's credential advice to indicate that the beneficiary's MCA is comparable to U.S. Masters' degrees in Management Information Systems or Computer Information Systems, rather than Computer Science. No evidence in the record distinguishes the beneficiary's

⁶ See <http://www.csc.ncsu.edu/academics/graduate/degrees/mcs.php>; and <https://tech.purdue.edu/degrees/ms-computer-and-information-technology/> (accessed March 24, 2014).

⁷ See <http://csmasters.uchicago.edu/page/curriculum> (accessed March 24, 2014).

MCA from a U.S. Master of Science in one of the preceding fields, which are not equivalent to a degree in Computer Science.

According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php>. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.⁸ If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁹

The record does not establish that the beneficiary’s MCA is the foreign equivalent of a Master’s degree in Computer Science issued by a regionally accredited U.S. college or university. Accordingly, the record does not demonstrate that the beneficiary had the education required by the labor certification as of the March 27, 2012 priority date. Therefore, the appeal will be dismissed.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has not been met.

ORDER: The appeal is dismissed.

⁸ See *An Author’s Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

⁹ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that United States Citizenship and Immigration Services (USCIS) had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.