U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 0 9 2014 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is for a Schedule A, Group I occupation. The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in Schedule A occupations. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA Form 9089, in duplicate. 8 C.F.R. §§ 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

On appeal, the petitioner submitted a brief and additional evidence. On June 24, 2013, the AAO issued a notice of intent to dismiss the appeal (NOID) in accordance with the regulation at 8 C.F.R. § 103.2(b)(16). The NOID advised the petitioner, in part, of information which was not consistent with a conclusion that the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of an advanced degree. The petitioner did not respond to the NOID.

For the reasons discussed below, upon review of the entire record, the petitioner has not established that the beneficiary is eligible for the classification sought or that the beneficiary meets the minimum job requirements listed on the ETA Form 9089.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In addition, for the classification at issue, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

The regulation at 8 C.F.R. § 204.5(k)(2) defines an "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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A physical therapist ultimately seeking admission based on an approved immigrant petition must present a certificate from a credentialing organization listed at 8 C.F.R. § 212.15(e). 8 C.F.R. §§ 212.15(a)(1), (c). The provisions at 8 C.F.R. §§ 212.15(f)(1)(i) and (iii) require that approved credentialing organizations for health care workers verify "[t]hat the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type" and "[t]hat the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States." The latter verification, however, is not binding on the Department of Homeland Security (DHS). 8 C.F.R. § 212.15(f)(1)(iii).

II. ANALYSIS

In the instant petition, the petitioner does not claim, nor does the record establish, that the beneficiary had at least five years of experience following a U.S. baccalaureate degree or a foreign equivalent degree as of the date of filing, February 6, 2012. Therefore, in order to be eligible for the requested classification as a member of the professions holding an advanced degree, the petitioner must establish that the beneficiary possesses a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate.

The beneficiary's eligibility to practice in the United States is not at issue. Similarly, that the beneficiary possesses the necessary credentials for licensure is also not an issue. The petitioner must

establish, however, that the beneficiary not only is a member of the professions holding an advanced degree, but also satisfied all of the educational, training, experience and any other requirements of the offered position as of the priority date. 8 C.F.R. §§ 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the job offer portion of the ETA Form 9089 to determine the required qualifications for the position, 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). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Chertoff*, No. CV-06-65.MO, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

On the ETA Form 9089, Part H, the petitioner indicated on line H.4 that the minimum education level for the position is a master's degree in physical therapy or a physical therapy related field. The petitioner further indicated on line H.8 that an alternate combination of five years of experience plus a bachelor's degree in physical therapy would also be acceptable. On line H.9, the petitioner indicated that a foreign educational equivalent would be acceptable. As previously stated, the petitioner does not claim that the beneficiary has the required five years of experience, as of the date of filing, February 6, 2012. Thus, the petitioner must establish that the beneficiary meets the minimum educational requirement of the offered position, a U.S. master's degree in physical therapy or the foreign equivalent of that degree, by virtue of her degree alone.

The petition included a copy of the beneficiary's 2002 Bachelor of Science in Physical Therapy from the and her transcripts, a "Report of Evaluation of Educational Credentials" from the Foreign Credentialing Commission on Physical Therapy (FCCPT), and an "FCCPT Course Work Evaluation Checklist" (evaluation). The FCCPT report states that the beneficiary's degree program consisted of four years of "[c]lassroom time" and ten months of "[c]linical time" and that the school "is comparable to a regionally accredited college or university in the U[nited] S[tates]." The report also states that the program's admission requirement is the equivalent of a diploma from a U.S. high school. The report found that the beneficiary "satisfies the total number of credits (120) required for a U.S. baccalaureate degree."

The report states that the beneficiary "meets the minimum requirements of fifty-four (54) semester credits in general education…[and] sixty-nine (69) semester credits in professional education." The report also states that the beneficiary's "education is substantially equivalent to the first professional degree in physical therapy in the United States."

In a letter dated March 21, 2011 letter, Managing Director of Credentialing Services at FCCPT, explained that, in 2001, the Commission on Accreditation in Physical Therapy Education (CAPTE) discontinued the accreditation of baccalaureate degree programs in the United States. further explained that U.S. accredited programs have converted to post-baccalaureate programs. concluded that the current first professional degree in the United States is at least a master's degree or higher.

As stated in the NOID, the fact that, after 2001, the United States no longer awards baccalaureate degrees in physical therapy is not, by itself, persuasive evidence that the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy.

As stated in the NOID, according to page iv of CAPTE's *Evaluative Criteria PT Programs* (January 2013) "[o]n average, DPT [Doctor of Physical Therapy] programs require 234 credits (116.4 preprofessional, 118.3 professional; 94.3 classroom/lab, 24 clinical education), which is 31.9 more credits than master's programs." Therefore, according to CAPTE, the average master's program in physical therapy requires 202.1 credits. In addition, according to the information from the *Occupational Outlook Handbook* (OOH) provided in the NOID, doctoral programs in physical therapy are typically three years, with a master's program requiring two to three years of study.

Although the petitioner relies on the fact that FCCPT has been approved by USCIS as an authorized credentialing organization, the regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e). FCCPT's authority, which USCIS granted pursuant to 8 C.F.R. § 212.15(e)(3), does not extend to determining whether (1) the beneficiary's education satisfies the regulatory definition of "advanced degree" or (2) the beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089, the issues in the instant petition. Regardless, a credentialing organization's verification of the beneficiary's education, training, license and experience for admission into the United States is not binding on DHS. 8 C.F.R. § 212.15(f)(1)(iii).

According to the Electronic Database for Global Education (EDGE), the Bachelor of Arts/Science/Commerce, etc. degree in the Philippines "represents attainment of a level of education comparable to a bachelor's degree in the United States." Under the credential description section, EDGE states that the bachelor's degree is "four to five years beyond the high school diploma (except Law which is an advanced degree as in the USA) with four being the most common length," but that "(Architecture, Engineering, Physical Therapy and Occupational Therapy for example, are five)." EDGE further states that the Master of Arts/Sciences degree in the Philippines "represents attainment of a level of education comparable to a master's degree in the United States."

On appeal, the petitioner submitted an additional evaluation from of The who asserts that the beneficiary's degree is equivalent to a master's degree in physical therapy. As discussed in the NOID, incorrectly states that EDGE "does not offer an opinion regarding the Bachelor of Science degree in Physical Therapy awarded by a university in the Philippines."

In its NOID, the AAO advised the petitioner of the information from EDGE and provided information about the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which created EDGE. The AAO provided a copy of a letter from Director, AACRAO International Education Services, explaining the conclusions in EDGE. The

AAO noted that USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.[1] The AAO provided the petitioner with copies of all of the relevant information.

explains that the Philippine educational system is similar to the U.S. system and uses the nomenclature used in the United States. EDGE's determination is that the five year physical therapy degree program in the Philippines is equivalent to an undergraduate level education in the United States, not an advanced degree. The decision in the United States to discontinue the baccalaureate degree in physical therapy does not create a presumption that a country that continues to offer a baccalaureate degree must have increased the level of that degree to above a baccalaureate.

While USCIS has considered the submitted evaluations, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. As stated in the director's decision and the AAO's NOID, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795.

The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989). If the petitioner submits relevant and probative evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)). In the instant petition, the petitioner has not submitted relevant and probative evidence that establishes by a preponderance of the evidence that (1) the beneficiary's degree is a foreign equivalent degree above that of a baccalaureate degree, as required by the classification and (2) the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy, as required by the ETA Form 9089.

As such, the petitioner has not established that the beneficiary meets the minimum requirements set forth on the ETA Form 9089 or that the beneficiary holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2). Therefore, the petitioner has not established that the beneficiary qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

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[1] *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

III. CONCLUSION

The petitioner has not established that the beneficiary meets the minimum requirements of the job offered, as listed on the ETA Form 9089. In addition, the petitioner has not established that the beneficiary qualifies for immigrant classification as an advanced degree professional pursuant to section 203(b)(2) of the Act, and the implementing regulation at 8 C.F.R. § 204.5(k)(2). Accordingly, the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.