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: MAR 18 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 Director, Texas Service Center, denied the petition concluding that the beneficiary does not meet the education requirement listed on the ETA Form 9089, Application for Alien Employment Certification.

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. *See* 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 from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petitioner files the petition directly with USCIS with an uncertified ETA Form 9089, in duplicate. *See* 8 C.F.R. §§ 204.5(a)(2), (k)(4); *see also* 20 C.F.R. § 656.15.

On September 23, 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 and counsel of information which was not consistent with a conclusion that the beneficiary's bachelor's degree in physical therapy is the foreign equivalent of a U.S. master's degree in physical therapy, the minimum education requirement listed on the ETA Form 9089. In response, counsel submitted (1) an additional statement, (2) an "Evaluation Report" from Foundation for International Services, Inc. (FIS), along with a printout from the FIS website, and (3) a copy of a non-precedent AAO decision.

The sole issue in the instant petition is whether the beneficiary satisfies the minimum job requirements specified on the ETA Form 9089. For the reasons discussed below, upon review of the entire record, including information submitted in response to the NOID, the petitioner has not established that the beneficiary meets the minimum requirements of the offered position as 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

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 satisfied all of the educational, training, experience and any other requirements of the offered position by 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. Michael Chertoff*, 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. The petitioner further indicated on line H.8 that an alternate combination of experience and education would not be acceptable. Accordingly, the petitioner defined the educational requirement for the position as a master's degree in physical therapy. On line H.9, the petitioner indicated that a foreign educational equivalent would be acceptable. 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 his degree alone.

The record includes copies of the beneficiary's (1) 1996 Bachelor of Science in Physical Therapy degree and transcripts from Southwestern University in the Philippines, (2) physical therapy licenses from the Philippines and New York, and (3) a "Course Work Evaluation Checklist" (evaluation) and a "TYPE I Comprehensive Credential Evaluation Certificate" (Type 1 Certificate) from the Foreign Credential Commission on Physical Therapy (FCCPT). The FCCPT evaluation states that the beneficiary's "degree does satisfy the minimum number of 120 semester credits that is required for a U.S. [b]achelors degree." The evaluation also states that "[t]he curriculum is substantially equivalent in content to the first professional physical therapy degree in the United States."

The record contains two letters from [redacted] Services at FCCPT, which explain that, in 2001, the Commission on Accreditation in Physical Therapy Education (CAPTE) discontinued the accreditation of baccalaureate degree programs in the United States. [redacted] further explains that U.S. accredited programs have converted to post-baccalaureate programs. [redacted] concludes 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 1996 bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's

degree in physical therapy. Furthermore, the first professional degree in physical therapy in the United States at the time of the beneficiary's graduation in 1996 was a bachelor's degree, not a master's degree. Although the NOID specifically addressed this issue, counsel does not address it in his response. The record does not contain evidence to demonstrate that the beneficiary's degree, which FCCPT found to "satisfy the minimum number of 120 semester credits that is required for a U.S. [b]achelor[']s degree" in 2005, is now properly considered an advanced degree based solely on the decision in the United States to no longer offer baccalaureate programs in physical therapy.

On appeal, counsel also relies on FCCPT's "accredit[ation] by the USCIS itself" to support the assertion that the beneficiary's degree "is equal to a U[.]S[.] [m]aster's degree." As previously stated however, 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 the beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089, the issue 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). In addition, 8 C.F.R. § 212.15(f)(i) authorizes FCCPT to look at all of the individual's credentials in the aggregate when it is considering the individual's suitability for health care worker certification for admissibility purposes. As FCCPT looks at coursework and credentials beyond the beneficiary's degree, its evaluation does not evaluate whether the beneficiary's degree from the Philippines is a single foreign equivalent degree to a U.S. master's degree in physical therapy, the degree listed on the ETA Form 9089. *See Snapnames.com, Inc.*, 2006 WL 3491005, at *11 (finding USCIS was justified in concluding that the combination of a three-year degree followed by the coursework required for membership in the Institute of Chartered Accountants of India, was not a single college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). Where the analysis of the beneficiary's credentials relies on "equivalence to completion of a United States baccalaureate or higher degree," the result is the "equivalent" of an advanced degree rather than a foreign equivalent degree.[1] In this matter, the beneficiary's degree in and of itself is not a foreign equivalent degree to a U.S. master's degree in physical therapy.

Counsel also asserts that the beneficiary holds the equivalent of a U.S. master's degree in physical therapy due to his New York State License. As discussed in the NOID, according to counsel's appellate brief, the submitted licensing requirements did not become effective until August 17, 2012. The beneficiary's license is dated April 10, 2008. In response, counsel simply states that the "New York State Education Department...found the [b]eneficiary's foreign degree to be equivalent to a U[.]S[.] master's degree." Counsel does not address the fact that the beneficiary was licensed in New York prior to the effective date of the regulations in his response. Regardless, contrary to counsel's assertions, the record does not contain any evidence that New York requires a foreign-educated

[1] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

applicant to hold a single foreign educational equivalent to a U.S. master's degree in physical therapy, the education requirement listed on the ETA 9089.

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."

In the 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 noted that USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.[2] The AAO provided the petitioner with copies of all of the relevant information.

The AAO also provided a copy of a letter from , Director, AACRAO International Education Services, explaining the conclusions in EDGE and confirming that the degree is equivalent to a U.S. bachelor's degree. Counsel asserts, in response, that the "reasoning is flawed…[and] based on [the] nomenclature of the degree." , however, explained that the educational system in the Philippines is "based on the U[.]S[.] educational model…and [] employs [the same] nomenclature" and that the "five year Bachelor of Physical Therapy degree awarded in the Philippines…is fully comparable to the Bachelor of Science in Physical Therapy once awarded in the USA." further states that it is the Philippine's master's degree in physical therapy "degree which would be comparable to the U[.]S[.] master's degree." Counsel's response also references the Bachelor of Law degree from the Philippines to demonstrate that that "we should not rely on the title of the degree alone." As previously stated, however, despite the nomenclature of the degree, EDGE finds that the Bachelor of Law degree in the Philippines is equivalent to "an advanced degree as in the USA."

As stated in the NOID, the information from EDGE and AACRAO is not consistent with a finding that the beneficiary's bachelor's degree in physical therapy is the foreign educational equivalent of a U.S. master's degree in physical therapy, as required by the ETA Form 9089. It is incumbent upon the petitioner to submit relevant and probative evidence to establish the beneficiary's eligibility. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010).

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[2] *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).

In response to the NOID, the petitioner submitted an evaluation from FIS which states that the beneficiary holds the equivalent of a U.S. master's degree in physical therapy. Although the evaluation lists the materials upon which the evaluator relied, the petitioner did not provide copies of the relevant pages of these resources. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Furthermore, the evaluation states that FIS relied in part on EDGE, but does not address EDGE's finding that a bachelor's degree in physical therapy from a university in the Philippines is equivalent to a U.S. bachelor's degree, not a master's degree. Finally, the semester credits granted for each course vary between the FIS evaluation and the FCCPT evaluation. For example, according to FIS, the beneficiary's class in Kinesiology is equivalent to 5 U.S. semester credits and the beneficiary completed a total of 220 semester credits. However, FCCPT lists the U.S. semester credit equivalence for the Kinesiology course as 3.75 and lists the total semester credits as 176.27. The record does not resolve which is correct.

Counsel also submitted a non-precedent AAO decision. The regulation at 8 C.F.R. § 103.3(c) provides that only precedent decisions of USCIS are binding on all its employees in the adminsitration of the Act and the Departments of Homeland Security and Justice must designate and publish precedent decisions in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Furthermore, the submitted decision was for a different occupation which is not covered by 8 C.F.R. § 212.15(c) , the beneficiary's education was obtained in a different country from the beneficiary in the instant petition, and there was not any information in EDGE, or from any other source, which did not support a finding that the beneficiary held the foreign equivalent of the degree listed on the ETA Form 9089. Therefore, it is also not relevant to the instant petition.

While USCIS has considered the findings of FCCPT and FIS, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. As referenced by the director and stated in the NOID, "[w]here 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.

On appeal, counsel asserts that *Matter of Caron* is not applicable because, in that case, the letters did "not [] establish[] the correlation between the proposed position and the educational degree required of that position," and that "[t]he Service had the basis…not to accept the opinions in those letters as th[ey]…were not in accord with other information presented to the Service." In the instant petition, the information from FCCPT and FIS is inconsistent, not only with each other, but also with the information in the record from other sources, including EDGE. Therefore, the case is relevant.

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, probative, and credible 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). However, in the instant petition, the petitioner has not submitted relevant and probative evidence that establishes by a preponderance of the evidence that the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign educational 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.

Therefore, the beneficiary cannot be found to qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

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. Accordingly the petition may not be approved.

The appeal will be dismissed for the reasons above. 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.