



U.S. Citizenship
and Immigration
Services

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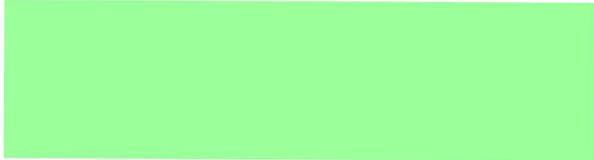
Date: **MAR 24 2014** Office: TEXAS SERVICE CENTER



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

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) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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 immigrant visa petition and the matter 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. *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, Application for Alien Employment Certification, 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) and (k)(4); *see also* 20 C.F.R. § 656.15.

The Director, Texas Service Center, denied the petition on May 5, 2011, concluding that “the petitioner has not demonstrated that the beneficiary met the minimum requirements at the time the Form ETA-9089 was accepted.”

On appeal, counsel submitted a statement and additional evidence. On June 24, 2013, the AAO sent counsel and the petitioner a notice of intent to dismiss the appeal (NOID). The AAO sent a copy of the NOID to counsel on January 24, 2014 for the limited purpose of amending counsel’s mailing address. The NOID advised the petitioner and counsel, in part, 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, as required by the ETA Form 9089. In response, counsel submitted an additional statement and additional evidence.

For the reasons discussed below, upon review of the entire record, the petitioner has not established 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

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 as of the priority date. 8 C.F.R. §§ 103.2(b)(1), (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. 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 petition included a copy of the beneficiary's Bachelor of Science in Physical Therapy degree from [REDACTED] in the Philippines and a "Comprehensive Credential Evaluation Certificate" dated February 22, 2007 from the Foreign Credentialing Commission on Physical Therapy (FCCPT). The petition also included a "FCCPT Course Work Evaluation Checklist" (evaluation) dated December 26, 2006, an updated evaluation dated August 11, 2010, a "Report of Evaluation of Educational Credentials" (report) from FCCPT dated February 19, 2007 and a duplicate report dated April 14, 2011, all of which [REDACTED] Managing Director of Credentialing Services at FCCPT signed. The FCCPT reports state 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 reports also state that the program's admission requirement is the equivalent of a diploma from a U.S. high school. According to the December 26, 2006 evaluation, the beneficiary's "degree does satisfy the minimum number of 120 semester credits that is required for a U.S. [b]achelor[']s degree." The updated evaluation states that the beneficiary's "degree does satisfy the minimum number of 150 semester credits that is required for a U.S. [m]aster's degree." The evaluation also states that "[t]he curriculum is substantially equivalent in content to the first professional degree in the United States, at the time of graduation...[which] is the master's or higher." As discussed below and in the AAO's NOID, the first professional degree in the United States at the time of the beneficiary's graduation on March 21, 1999 was a bachelor's degree, not a master's degree.

In a letter dated February 19, 2009, [REDACTED] explained 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 explained that U.S. accredited programs have converted to post-baccalaureate programs. [REDACTED] concluded that the current first professional degree in the United States is at least a master's degree or higher.

However, as stated in the NOID, “[t]he fact that the United States no longer awards baccalaureate degrees in physical therapy is not, by itself, persuasive evidence that the beneficiary’s bachelor’s degree from the Philippines is equivalent to an advanced degree.” In addition, as previously stated, the first professional degree in physical therapy in 1999 was a bachelor’s degree, an issue counsel fails to address in his response.

As stated in the NOID, the updated evaluation, in the summary at part iv, the listed minimum requirements of 54 general education credits and 69 professional education credits remain unchanged; however, the total minimum required credits increased from 123 credits to 150 credits. Both evaluations state that the beneficiary has a total of 77.25 general education credits and 85.5 professional education credits. According to a February 12, 2014 email from [REDACTED] submitted in response to the NOID, “in 2007, the minimum [total number of credits] in the U[.]S[.] was 123 credits,” as listed in the 2007 evaluation. The email further states that “USCIS requires that a candidate meet current educational standards, thus the minimum is now at least 150 credits for a M[aster] [of] S[cience] degree,” but does not address whether the general and professional education minimums also increased.

According to a July 16, 2013 letter from [REDACTED], also submitted in response to the NOID, “FCCPT uses the Coursework Tool [(CWT)] developed and licensed by the Federation of State Boards of Physical Therapy [(FSBPT)].” Also in response to the NOID, counsel refers the AAO to the FSBPT website, [https://www.fsbpt.org/FreeResources/RegulatoryResources/CourseworkTools\(CWT\).aspx](https://www.fsbpt.org/FreeResources/RegulatoryResources/CourseworkTools(CWT).aspx), in footnote 1 of his letter. Accordingly, counsel has incorporated that website into the record of proceeding, which has links to CWTs 1-5.

According to the July 16, 2013 letter from [REDACTED] “FCCPT uses the Coursework Tool [(CWT)] developed and licensed by the Federation of State Boards of Physical Therapy.” In response to the AAO’s NOID, footnote 1, counsel refers the AAO to FSBPT’s website, [www.fsbpt.org/FreeResources/Regulatory/Resources/CourseworkTools\(CWT\).aspx](http://www.fsbpt.org/FreeResources/Regulatory/Resources/CourseworkTools(CWT).aspx), which includes a link to the actual coursework tools. Counsel has incorporated this website into the record of proceeding by reference. The AAO accessed the CWT at https://www.fsbpt.org/Portals/0/documents/free-resources/CWT4_Rev0812.pdf. CWT 4 covers “Foreign Educated Physical Therapists who graduated from 1998 to June 30, 2009.” The beneficiary graduated in March 1999. In the instant petition, for both the original and the updated evaluations, FCCPT utilized “Coursework Evaluation Tool 1992,” version 4.40, which is for “Foreign Educated Physical Therapists Who Graduated From 1992 to 1997.” See http://www.fsbpt.org/download/CWT_1992.pdf, accessed March 20, 2014 and incorporated into the record of proceeding. According to page 6 of the complete publication for this tool, the “Tool 1992 requires a university-based degree, but does not specify what this degree should be.” In addition, Tool 1992 lists the minimum general education requirement as 42 semester credits, not the 54 Dr. [REDACTED] specified on beneficiary’s evaluation.

As previously stated, although [REDACTED] email explained that the beneficiary must “meet current educational standards” and the change in total minimum credits, her email did not discuss the general and professional education minimum credits. The complete CWT 4 publication, available

on the website counsel references, states on page 3 states that “[n]inety semester credits shall be the minimum required in professional education” for a total of 150 credits, the total credits listed on the updated evaluation. The beneficiary, however, has only 85.5 professional education credits. Accordingly, the new correspondence from [REDACTED] is not probative and relevant evidence responsive to the AAO’s concerns stated in the NOID regarding the FCCPT evaluation as evidence that the beneficiary has a foreign equivalent degree to a U.S. master’s degree in physical therapy.

In its NOID, in addition to providing the information below, the AAO explained that neither the FCCPT report, nor the evaluation, provides a basis for the statement that 150 semester credits is the minimum required for an advanced degree in physical therapy in the United States. As stated in the AAO’s NOID, page iv of CAPTE’s *Evaluative Criteria PT Programs* (January 2013) states that “[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, the DOL’s *Occupational Outlook Handbook* stated, as of June 18, 2013, that doctoral programs in physical therapy are typically three years, with a master’s program requiring two to three years of study.¹

The July 2013 letter from [REDACTED] states that “FCCPT’s role is to determine substantial equivalency to the minimum requirement for a U.S. entry-level master’s degree” and that “there is support from multiple sources for the conclusion that 150 credit hours is the appropriate measure for such a degree.” The letter further cites the U.S. Department of Education (DOE), Institute of Educational Sciences, Publication from the National Center for Education Statistics [NCES]: *Digest of Education Statistics 2006, Appendix B: Definitions*, as well as data from *The American Physical Therapy Association (“APTA”) Fact Sheet, 2009-10*.

The petitioner failed to provide copies of [REDACTED] sources. 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 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). An online search for the documents Dr. [REDACTED] references yielded both documents. According to the referenced *Digest of Education Statistics*, a bachelor’s degree “requir[es] at least 4 years (or equivalent) of full-time college-level study. This includes degrees granted in a cooperative or work-study program.” In other words, a bachelor’s degree may, in some cases, require more than four years, or 120 semester credits, and include “co-operative or work-study programs,” such as the beneficiary’s ten month clinical program.

The APTA Fact Sheet does not discuss whether 150 credit hours is the appropriate measure for a degree above a baccalaureate, but rather states that the average physical therapist education program required 210.9 total semester credits in 2004-2005 and 228.1 total semester credits in 2009-2010,

¹ DOL recently revised its information pertaining to physical therapists at <http://www.bls.gov/ooh/healthcare/print/physical-therapists.htm>; however, the AAO incorporated the June 18, 2013 version into the record of proceeding and provided a copy with the NOID.

which far exceeds the 150 stated by [REDACTED] and is consistent with the information in CAPTE's publication, discussed in the AAO's NOID and above. [REDACTED] also references the Electronic Database for Global Education (EDGE) which "defines the undergraduate bachelor's degree as four years of study, or 120-140 semester credits...[and] a master's degree as 1-2 years in length," but also does not state that 150 semester credits is the minimum required for a U.S. advanced degree in physical therapy.

In her July 2013 letter, [REDACTED] states that "[t]here is no basis, however, for using an 'average' calculation to set the minimum threshold for educational equivalency" and that "[s]ome recognized U.S. programs will fall above and below this 'average.'" The AAO provided this information in the NOID to demonstrate that, according to CAPTE, the "average" master's program length in physical therapy requires 52.1 credits, or almost two years, more than the 150 used by FCCPT and is consistent with a six to seven year total program length, including a four year baccalaureate degree prior to entry into an advanced degree physical therapy program. In the instant petition, the beneficiary's education consisted of four years of classroom time plus ten months of clinical time after graduation from high school. Furthermore, the fact that it is possible to receive a master's degree in some fields after a total of 150 semester credits, does not mean that every degree requiring at least 150 credits is above a baccalaureate. Ultimately, the petitioner must still demonstrate that the beneficiary has a foreign equivalent degree above a baccalaureate in physical therapy, the beneficiary's profession, rather than simply meeting the minimum number of total credits for a master's degree in another field.²

According to the July 2013 letter from [REDACTED]

Each applicant is reviewed separately and all documentation from the post-secondary level [is] included in the review. Regardless of the individual's degree title, the curriculum followed by the individual to complete their degree, combined with additional coursework, may meet the minimum length of study and content requirements established by CAPTE for U.S. schools. Notably, in the case of the [REDACTED] all applicants from this university who have requested a credentials evaluation from FCCPT had completed additional post-graduate studies to supplement their initial degree, which contributed to the equivalency analysis.

The letter also states that "FCCPT's analysis does not examine whether a particular degree or educational institution is equivalent – rather, FCCPT separately evaluates the specific coursework of each individual applicant." 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

² Being a member of the professions does not entitle the alien to classification as a professional if he does not seek to continue working in that profession. See *Matter of Shah*, 17 I&N Dec. 244, 246-47 (Reg'l Comm'r 1977).

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). In this matter, the petitioner has not demonstrated that the beneficiary’s degree in and of itself is the foreign equivalent degree to a U.S. master’s degree in physical therapy.

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.”³ The provided information makes it clear that FCCPT looks at an individual’s coursework (which may include coursework from multiple sources), and not the individual’s degree, to determine “substantial equivalence,” which is a different standard. Based upon FCCPT’s methodology, the evaluation is not a proper basis to determine whether the beneficiary holds the foreign equivalent of a U.S. master’s degree in physical therapy, the requirement listed on the ETA Form 9089.

According to 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.”

The AAO’s NOID 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.⁴ While [REDACTED] is correct that the referenced Liaison Council is no longer in existence, according to its website, AACRAO does still maintain a group of experts that reviews the information in EDGE. The AAO also provided a copy of a letter from [REDACTED], Director, AACRAO International Education Services, received in response to AAO’s request for further information on this issue. The letter explains that the educational system in the Philippines is “based on the U[.]S[.] educational model...and [] employs [the same] nomenclature.” [REDACTED] further states that “[t]he master of science in physical therapy

³ 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.

⁴ 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).

exists in the Philippines as a higher or advanced degree and it is THAT degree which would be comparable to the U[.]S[.] master's degree." The AAO provided the petitioner with copies of all of the relevant information.

In response, counsel asserts that EDGE is relying solely on the name of the degree itself. Rather, as stated above, [REDACTED] 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. Unlike FCCPT, which bases its determination on credits for coursework, EDGE looks at the educational system of the country and the degree itself to make its determination.

The petitioner has not demonstrated that the information from EDGE is not applicable to the beneficiary's baccalaureate degree, especially since it addresses the five-year (including clinical training) Bachelor of Physical Therapy degree offered in the Philippines. Furthermore, the petitioner has not demonstrated that the beneficiary's program is different from the other five year physical therapy programs EDGE references.

Counsel asserts that the EDGE/AACRAO finding is "inconsistent" with "FSBPT, FCCPT, CAPTE, and 52 of 53 state jurisdictions." However, there is no evidence that any of these entities require an individual to have a single degree that, in and of itself, is the foreign equivalent of a U.S. master's degree in physical therapy, rather than simply meeting a minimum number of credits which can be granted from a variety of sources.

Counsel also states that the "FCCPT opinion is more credible [than AACRAO/EDGE] because it ...has been singled out by the USCIS for evaluating degrees under the nearly identical Healthcare Worker Certification Standard." The regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers, however, 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 response to the NOID, counsel also submitted two non-precedent AAO decisions. 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 administration of the Act. 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 two decisions involved a different occupation. In addition, the beneficiaries in those cases obtained their degrees in a different country from the one in which the beneficiary obtained her degree. Finally, the unpublished decisions did not involve conflicting

information from EDGE or any other source. In fact, in both decisions, the information regarding the degree equivalency submitted was consistent with EDGE's findings. Therefore, the petitioner has not established that the two non-precedent decisions are relevant to the instant petition.

in her July 2013 letter, also references information in EDGE regarding the U.S. Doctor of Pharmacy degree, the master's degree in physical therapy from Poland and the "doctorate degree in physiotherapy" from "some countries in the former Soviet Union." Similar to the non-precedent decisions above, this information is not relevant because the Doctor of Pharmacy is a U.S. degree in a different field and the other degrees are from countries other than the one where the beneficiary obtained her degree.

Counsel also asserts in his response to the AAO's NOID that, based upon the beneficiary's license from the State of Texas, his degree has been "deemed equivalent to a U[.] S[.] master's degree." The AAO accessed the Texas Executive Council of Physical Therapy and Occupational Therapy Examiners website counsel references. Ultimately, the record does not contain any evidence that Texas, or any other state, requires a foreign-educated applicant to hold a single degree equivalent to a U.S. master's degree in physical therapy, the education requirement listed on the ETA 9089. In fact, according to the website to which counsel refers the AAO, <http://www.ptot.texas.gov/idl/E34EF7AF-0126-0786-6B3A-F82DCF9B92D5>, Texas specifically allows for "credit obtained through applicable College Level examination Placement (CLEP) or other college advanced placement exams."

Based upon all of the information above, the petitioner has not demonstrated that the beneficiary holds the foreign equivalent of a U.S. master's degree in physical therapy, the education listed on 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*, 22 I&N Dec. 369, 376 (AAO 2010). Where an opinion is not in accord with other information, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* 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). 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 degree is the foreign equivalent of a U.S. master's degree in physical therapy.

As such, the petitioner has not established that the beneficiary meets the minimum requirements set forth on the ETA Form 9089.

Beyond the decision of the director, the notice of filing failed to comply with the regulatory requirements. The notice of filing lists nine "possible locations of employment," including a location in consistent with the information listed on the prevailing wage determination. The ETA Form 9089 and Form I-140, Immigrant Petition for Alien Worker, which were both signed by the employer under penalty of perjury, list the worksite as " and other unanticipated locations." The record contains a single notice of filing posted at the

location only and, thus fails to comply with the regulations at 20 C.F.R. §§ 656.10(d)(1)(ii) and 656.15(b)(2). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, at 145 (*de novo* authority of AAO well recognized by federal courts).

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 failed to comply with the notice of filing regulations. 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.