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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

B6

DATE: AUG 15 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for John Vaughan
Perry Rhew
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 is the owner and operator of multiple fast-food and conventional Indian restaurants. It seeks to employ the beneficiary permanently in the United States as an accountant pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification[1] (ETA Form 9089 or labor certification), approved by the Department of Labor (the DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary has a U.S. bachelor's degree or foreign degree equivalent required by the terms of the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N

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[1] The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. The current Department of Labor (DOL) regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. Since the instant labor certification application was filed after March 28, 2005, it is governed by the PERM regulations.

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

158 (Act. Reg. Comm. 1977). The priority date of the petition is September 13, 2005, which is the date the ETA Form 9089 was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).[3] The Immigrant Petition for Alien Worker (Form I-140) was filed on July 18, 2007.

The job qualifications for the certified position of accountant are found in an attachment to Part H Item 11 that describes the job duties to be performed as follows:

> Perform duties in general accounting under the direction of the financial manager. Prepare ledger and journal, documenting all cash, credit card, and other accounting transactions using MYOB, Infopillar, Peachtree, and Paragon. Prepare consolidated balance sheet to reflect assets, liabilities and depreciation, profit and loss statements and federal and state tax returns. Apply accounting principles to analyze data and past/present financial operations and projects future revenues and expenditures with the use of statistical tools including regression and variance analysis. Advise management of the effects of the accounting and financial transactions and health of the company.

The ETA Form 9089, Part H sets forth the minimum requirements for the position of an accountant. Part H Items 4, 4-A, and 4-B list the proffered position's requirements as a bachelor's degree in "Accounting or Business Administration with major in Accounting." Item 5 of Part H states that no training is required for the proffered position, while Item 6 of Part H states that no experience in the offered job of accountant is required. Part H Item 7 indicates that the employer will not accept a bachelor's degree in an alternate field of study. Item 8 of Part H indicates that the employer will not accept any alternate combination of education and experience. Item 9 of Part H indicates that the employer will accept a "foreign educational equivalent" to a U.S. bachelor's degree in "Accounting or Business Administration with major in Accounting." Therefore, the labor certification requires an individual with a U.S. bachelor's degree or foreign equivalent in accounting or a U.S. bachelor's degree or foreign equivalent in business administration with a major in accounting. Furthermore, the fact that the petitioner specified that the proffered position of accountant did not require either training or experience in the offered job precludes consideration of the petition under the skilled worker classification. *See* section 203(b)(3)(A)(i) of the Act.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation was a bachelor's degree in "Business Administration with major in Accounting" conferred by the University of Delhi in New Delhi, India, in 1999. In corroboration of this claim, the petitioner submitted a copy of a Bachelor of Commerce degree issued to the beneficiary from the said university, dated September 16, 2000. The petitioner also submitted a photocopy of a "Statement of Marks" from the University of Delhi indicating that the beneficiary attended this institution's "School of Correspondence" and passed examinations at the end of the

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[3] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

1999 school year. In addition, the record contains copies of Secondary School Certificates reflecting the beneficiary's successful completion of examinations on May 30, 1994 and July 29, 1994, respectively. Further, the record contains a copy of a transcript from the University Extension, University of California, Los Angeles, which reflects that the beneficiary completed ten additional classes at this institution from March 31, 2001 through December 12, 2002. The transcript provides no indication that the beneficiary received any degree as a result of his studies at the University Extension, University of California, Los Angeles.

The record contains evaluations of the beneficiary's education from Career Consulting International, Marquess Educational Consultants Limited, and the American Evaluation Institute (AEI), respectively. The first two evaluations assert that the beneficiary's bachelor of commerce degree from the University of Delhi is equivalent to a four-year Bachelor of Business Administration with a major in Accounting from an accredited institution of higher learning in the United States, while the AEI evaluation concludes that the combination of the University of Delhi degree with the courses taken at the University of California represents an education equivalent to a four-year U.S. bachelor's degree. Accordingly, the three evaluations are inconsistent with each other. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the petition on April 26, 2008. The director determined that the beneficiary's bachelor of commerce degree from the University of Delhi could not be accepted as a foreign equivalent degree to a four-year U.S. bachelor's degree in accounting or a four-year U.S. bachelor's degree in business administration with a major in accounting.

On appeal, counsel contends that the evaluations in the record established that the beneficiary's Bachelor of Commerce degree from the University of Delhi is equivalent to a four-year bachelor's degree in Business Administration with a major in accounting from an accredited institution of higher learning in the United States. Counsel asserts that the beneficiary completed 120 credit hours of study to earn the bachelor of commerce degree from the University of Delhi. Counsel submits a statement signed by the Assistant Registrar for the School of Correspondence Studies of the University of Delhi in support of this assertion.

The occupational classification of the offered position is not one of the occupations statutorily defined as a profession at section 101(a)(32) of the Act, which states: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The DOL assigned the occupational code of 13-2011.00 with accompanying job title "accountant" to the proffered position. The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the

applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL. Located online at http://online.onetcenter.org, O*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. *See* http://www.bls.gov/soc/socguide.htm. In the instant case, O*NET reflects that the SOC occupational code of 15-1142.00 is used for both the positions of accountant, with the specific SOC occupational code of 15-1142.01, and auditor, with the specific SOC occupational code of 15-1142.02.

The O*NET online database states that the occupation of accountant falls within Job Zone Four, requiring "considerable preparation" for the occupation type closest to the proffered position. The DOL assigns a standard vocational preparation (SVP) of 7.0 to <8.0 to the occupations, which means that "[M]ost of these occupations require a four-year bachelor's degree, but some do not." O*NET reflects that 79% of individuals employed in the occupation of accountant hold a bachelor's degree, 9% hold a master's degree, and 5% hold a doctoral or professional degree. Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

> A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified.
>
> Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

The proffered position of accountant requires a bachelor's degree in accounting or a bachelor's degree in business administration with a major in accounting, which is the minimum required by the regulatory guidance for professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). Thus, combined with the DOL's classification and assignment of educational and experiential requirements for the occupation, the certified position must be considered as a professional occupation.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions,

> the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

On September 9, 2011, the AAO issued a Notice of Derogatory Information and Request for Evidence (NDI/RFE) to the petitioner and counsel. In this request, the AAO noted that there was no evidence in the record of proceeding that the beneficiary ever enrolled in classes resulting in the award of a degree beyond the completion of his bachelor of commerce degree from the University of Delhi in India. The AAO also noted that the petitioner did not specify on the ETA Form 9089 that the minimum academic requirements of a bachelor's degree in accounting or a bachelor's degree in business administration with a major in accounting might be met through a combination of lesser degrees and/or a quantifiable amount of work experience.

The AAO further advised that according to the Electronic Database for Global Education (EDGE) of the American Association of Collegiate Registrars and Admissions Officer (AACRAO), the beneficiary's bachelor of commerce degree from the University of Delhi in India is equivalent to two to three years of undergraduate study in the United States. The AAO noted that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a four-year U.S. bachelor's degree or its foreign equivalent and/or a quantifiable amount of work experience when the labor market test was conducted which, again, assumes the applicability of the skilled worker classification. Therefore, the AAO requested that the petitioner provide evidence of its intent concerning the actual minimum requirements of the position as that intent was specifically expressed to the DOL while that agency oversaw the labor market test and determination of the actual minimum requirements set forth on the certified labor certification application. Such intent may have been illustrated through correspondence with DOL, amendments to the labor certification application initialed by DOL and your organization, results of recruitment, or other forms of evidence relevant and probative to illustrating the petitioner's intent about the actual minimum requirements of the proffered position and that those minimum requirements were clear to potential qualified candidates during the labor market test.

In response to the NDI/RFE, counsel submits a statement in which he contends that the ETA Form 9089 merely requires a bachelor's degree for the proffered position regardless of how this degree was earned and that the beneficiary clearly meets this requirement even if his bachelor's degree was earned in three years. Counsel acknowledges that the petitioner did not explicitly state that it would accept a foreign degree equivalent to a U.S. bachelor's degree in the recruitment advertisements for the proffered position, but he did indicate that a foreign degree equivalent to a U.S. bachelor's degree was required for the position on the ETA Form 9089. Counsel includes copies of the

documentation prepared in accordance with the DOL labor certifications regulations at 20 C.F.R. § 656, including a recruitment report, online and print recruitment conducted for the position, and the posted notice of the filing of the labor certification.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
>
> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is left to USCIS to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[4] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> * * *
>
> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

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[4] Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).[5]

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding

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[5] The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

consideration of the alien's combined education and work experience. *Id.* at 11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at 14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at 17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the Form ETA 750 and does not include alternatives to a four-year bachelor's degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at 7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id. See also Maramjaya v. USCIS,* Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the ETA Form 9089 does not specify an equivalency to the requirements of a bachelor's degree in accounting or a bachelor's degree in business administration with a major in accounting.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification 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 Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Furthermore, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be

construed under the assumption that Congress intended it to have purpose and meaningful effect. *See Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions shows that a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate, we could not consider education earned at an institution other than a college or university.

Moreover, as advised in the NDI/RFE issued to the petitioner and counsel by this office, the AAO has reviewed the EDGE created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). 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.[6] 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.[7]

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[6] *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.

[7] 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 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.

EDGE's credential advice states that a bachelor of commerce degree in India is equivalent to two to three years of undergraduate study in the United States (depending on whether it is a two-year or three-year program). According to EDGE, therefore, the beneficiary's three-year Bachelor of Commerce degree from the University of Delhi is comparable to three years of study at a U.S. college or university.

As previously discussed, the record contains evaluations of the beneficiary's education from Career Consulting International, Marquess Educational Consultants Limited, and the American Evaluation Institute (AEI), respectively. The first two evaluations conflict with the third, as well as with EDGE, because they assert that the beneficiary's three-year Indian degree by itself is equivalent to a U.S. bachelor's degree. The third evaluation - by AEI - baldly asserts that the beneficiary's three-year Indian degree and subsequent coursework at UCLA is equivalent to a U.S. bachelor's degree, while ignoring the fact that no degree of any kind was earned at UCLA and offering little or no substantive analysis as a basis for its equivalency conclusion. For the reasons discussed above, the evaluations in the record have little probative value as evidence that the beneficiary's education is equivalent to a U.S. bachelor's degree.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. 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; *see also 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)). For the reasons discussed above, the evaluations in the record have little probative value as evidence that the beneficiary's education is equivalent to a U.S. bachelor's degree.

Therefore, even if the petition qualified for skilled worker consideration, the beneficiary does not meet the terms of the labor certification, and the petition would be denied on that basis as well. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification).

The ETA From 9089 does not provide that the minimum academic requirements of a bachelor's degree in accounting or a bachelor's degree in business administration with a major in accounting might be met through three years of college or some alternative formula other than that explicitly stated on the ETA Form 9089. All of the copies of the notice(s) of Internet and newspaper advertisements with a single exception, provided with the petitioner's response to the NDI/RFE issued by this office, state that a bachelor's degree in accounting or a bachelor's degree in business administration

with a major in accounting is required. Furthermore, both the petitioner's recruitment report which accompanied the original filing of the ETA Form 9089 with the DOL and the posted notice of the filing of the labor certification with the DOL specifically state that the requirements of the proffered position of accountant are a "Bachelor's degree in Accounting or Business Administration with a major in Accounting," without advising any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and, thus, is not eligible for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.