(b)(6)

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

DATE: AUG 0 2 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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[1] describes itself as a Montessori school. It seeks to permanently employ the beneficiary in the United States as a kindergarten teacher. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner marked box "e" at Part 2, indicating that it seeks to classify the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is November 15, 2010. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that as the labor certification allows for less than a bachelor's degree in H.8, the petitioner failed to demonstrate that a baccalaureate degree is required for entry into the occupation therefore the position cannot be considered a professional position.

The record shows that the appeal is properly filed 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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

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[1] The petitioner's name as listed on the ETA Form 9089, Form I-140 and Form I-290B is . The federal employer identification number on the ETA Form 9089 and Form I-140 is . A search of the Wisconsin Department of Financial Institutions for ' does not provide any results. The record includes financial statements and independent auditor's reports for d/b/a . The federal employer identification number for *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states, "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." The petitioner should address the issue of its name in any future filings, and establish that operates under the same tax identification number as

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> 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 significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. 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).[3] 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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> . . .
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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

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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).

[3] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.,* 699 F.2d at 1006, revisited this issue, stating:

> 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).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers

available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

In the instant case, the petitioner requests classification of the beneficiary as a professional. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

> 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.

Section 101(a)(32) of the Act defines the term "profession" to include, but is not limited to, "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." If the offered position is not statutorily defined as a profession, "the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation." 8 C.F.R. § 204.5(l)(3)(ii)(C).

In addition, the job offer portion of the labor certification underlying a petition for a professional "must demonstrate that the job requires the minimum of a baccalaureate degree." 8 C.F.R. § 204.5(l)(3)(i)

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor's degree as a minimum for entry; the beneficiary possesses at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university; and the job offer portion of the labor certification requires at least a bachelor's degree or a foreign equivalent degree. The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification.

At issue in this case is whether the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor's degree as a minimum for entry, whether the beneficiary possesses a U.S.

bachelor's degree or a foreign equivalent degree, and whether the job offer portion of the labor certification requires at least a bachelor's degree or a foreign equivalent degree.

On appeal, counsel states that: INA § 203(b)(3)(A)(ii) permits an application for a beneficiary who holds a bachelor's degree in addition to three years of "progressively responsible work teaching experience;" the ETA Form 9089 clearly states an alternative to a B.A. from the United States; the beneficiary holds a foreign degree equivalent; and the AAO should reverse the director's invalidation of the approval of the ETA Form 9089. The AAO notes that the prior version of the Form I-140 allowed the petitioner to select both professional and skilled worker in the same box. The current version of the Form I-140 requires the petitioner to select either professional or skilled worker. In this case, the petitioner selected professional only.

The AAO notes that offered position of kindergarten teacher is listed as a profession at section 101(a)(32) of the Act (i.e. teachers in elementary or secondary schools).

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in Education or Core Curriculum Subject Area.
H.5. Training: 12 months, Certificate in Montessori Teaching Method.
H.6. Experience in the job offered: 12 months.
H.7. Alternate field of study: English.
H.8. Alternate combination of education and experience: Accepted.
H.8-A. Alternate level of education required: Other.
H.8-B. Alternate level of education required: "Using 3 for 1 equivalency to be combination of B.A. level education + e."[4]
H.8-C. Number of years experience: 3 years.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: Montessori certificate.

The job offer portion of the labor certification must require at least a bachelor's degree or a foreign equivalent degree. The labor certification lists the job requirements as a Bachelor's degree in Education, a Core Curriculum Subject Area, or English, 12 months of training to receive a Certificate in Montessori Teaching Method, and 12 months of experience in the job offered at H.4, H.5 and H.6. However, in H.8, the petitioner allows for a combination of alternate education and experience, "Using 3 for 1 equivalency to be combination of B.A. level education + e" [presumed to be experience] which does not meet the minimum of a bachelor's degree required by the regulatory guidance for

[4] Counsel asserts that "e" refers to experience.

professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). The alternate combination of education and experience requires a "combination of B.A. level education" and three years of experience. The acceptance of the alternate combination of education and experience, less than a U.S. bachelor's degree, as an equivalent to a bachelor's degree reflects that the labor certification does not require at least a U.S. bachelor's degree or the foreign equivalent thereof. 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of foreign equivalent degree.

In order to be classified as a professional, the beneficiary must possess at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional. 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).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the 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. *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' requirement of a single "degree" for members of the professions is deliberate.

The regulation also 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." 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). 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) of the Act (relating to aliens of exceptional ability). However, for the professional category, it is clear that the degree must be from a college or university.

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008)(for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

Thus, the plain meaning of the Act and the regulations is that the labor certification require and the beneficiary of a petition for a professional must possess a degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree.

The labor certification requires less than the requirements of the professional category. As mentioned, the minimum of a bachelor's degree is required by the regulatory guidance for professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). The alternate combination of education and experience requires using "3 for 1 equivalency to be combination of B.A. level education + e" and three years of experience. The acceptance of the alternate combination of education and experience, less than a U.S. bachelor's degree, as an equivalent to a bachelor's degree reflects that the labor certification does not require at least a U.S. bachelor's degree or the foreign equivalent thereof. 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of foreign equivalent degree. Therefore, the labor certification does not support filing under the professional category.

Beyond the decision of the director, the petitioner has also not established that the beneficiary possesses at least a U.S. bachelor's degree or a foreign equivalent thereof from a college or university as of the priority date. 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*, 229 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, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In the instant case, the labor certification states that the beneficiary possesses a 3 year bachelor's degree from [redacted] India, completed in 2001.

The record contains a copy of the beneficiary's [redacted] Bachelor of Arts Diploma issued on March 27, 2001.

The record also contains an evaluation of the beneficiary's educational credentials prepared by [redacted] on March 28, 2005. The evaluator found the beneficiary's bachelor's degree from India to be equivalent to three years of university-level credit from a regionally accredited college or university in the United States, but does not state an equivalent to any field of study. The evaluation considers the beneficiary's Montessori Diploma as "equivalent [to] completion of professional training offered at a private institution in the United States." The evaluation does not state the length of this training. The evaluation does not assign or attribute any academic equivalency to her employment experience, which is listed in the evaluation as four plus years of experience as a teacher, some designated as part-time experience. The evaluation does not conclude that the beneficiary has either the foreign equivalent of a U.S. bachelor's degree, or even the equivalent of a U.S. bachelor's degree based on combined education and experience, but instead states only that she has "the equivalent of three years of university-level credit from a regionally accredited college or university in the United States."

The petitioner appears to rely on the beneficiary's bachelor's degree from India (less than four years) combined with her employment experience as being equivalent to a U.S. bachelor's degree. A three-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees and/or work experience, the result may be the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional. However, as noted above the evaluation fails to conclude that the beneficiary has even the equivalent of a bachelor's degree.

The AAO has reviewed the Electronic Database for Global Education (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." *See* http://edge.aacrao.org/info.php. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[5] 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.[6]

According to EDGE, a Bachelor of Arts degree from India is comparable to "two or three years of university study in the United States." The record reflects that the beneficiary completed three years of courses. In addition, the evaluator found her bachelor's degree to be equivalent to three years of university-level credit from a regionally accredited college or university in the United States.

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[5] *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.

[6] 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.

Therefore, the AAO finds the beneficiary's degree to be comparable to three years of university study in the United States. Nothing shows, however, that the beneficiary has a four-year bachelor's degree in Education, a Core Curriculum area, or English to meet the requirements of H.4, or even that the beneficiary has the equivalent to a bachelor's degree to meet any stated alternative in H.8 if filed under the proper category.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree from a college or university. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

Beyond the decision of the director, the petitioner has also not established that the beneficiary possessed the required training and special skills in H.5 and H.14 as of the priority date. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). 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 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).

The record includes a Montessori diploma for the beneficiary from India from March 29, 2003. The record does not include any transcripts or a credentials evaluation for this diploma or establish that it is a 12 month program. The record does not establish that the beneficiary possesses the required training and special skills in H.5 and H.14.

In addition, the AAO finds that the petitioner failed to establish that the beneficiary possesses at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university and the required training and special skills in H.5 and H.14.[7] Therefore, the beneficiary does not meet all the training and experience requirements of the labor certification.

Additionally, beyond the decision of the director, the petitioner has also not established that the beneficiary has the requisite experience to qualify for the offered position. The labor certification states that the offered position requires 12 months of experience in the job offered or three years of experience if an alternate combination of education and experience is used. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a school teacher with in India from April 3, 2000 until March 29, 2002, and based

[7] H.14 requires a "Montessori Certificate," the requirement of which similarly appears to be based on a 12 month program.

on experience as a school teacher with in India from April 1, 1997 until March 31, 2000.

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter from states that the beneficiary worked part-time and the number of hours she worked per week is not clear from the letter. The letter is not clear as to what subject(s) the beneficiary taught. The AAO notes that the beneficiary was in school at the time of her employment with The AAO also notes that the credentials evaluation partially relies on this experience.

The evidence in the record does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.