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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: DEC 1 9 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

SELF-REPRESENTED

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,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter and came before the Administrative Appeals Office (AAO) on appeal. The AAO affirmed the director's decision on June 20, 2013. The matter is now before the AAO on a motion to reopen and reconsider.[1] The motion will be granted. The previous decision of the AAO, dated June 20, 2013, will be affirmed and the petition will remain denied.

The petitioner describes itself as an information technology business. It seeks to permanently employ the beneficiary in the United States as a software engineer. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

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 May 17, 2006. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess a U.S. bachelor's degree or foreign equivalent as required by the terms of the labor certification. In affirming the director's decision on June 20, 2013, the AAO held that the petitioner did not establish (1) that the beneficiary possessed a U.S. bachelor's degree or the foreign equivalent thereof and (2) that the beneficiary met the minimal educational requirements 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).

In the instant case, the petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).[2] In its June 20, 2013

---

[1] The petitioner indicated on the Form I-290B, Part 2, that it was filing an appeal. The AAO does not exercise jurisdiction over its own decisions. However, the petitioner's language in Part 3 indicates that it intended to file a motion to reopen the AAO's June 20, 2013 decision. Counsel's brief in the record also indicates that the petitioner intended to file a motion to reopen and reconsider the AAO's June 20, 2013 decision. Accordingly, the AAO will review the instant matter as a motion to reopen and reconsider its previous decision.

[2] Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested classification by checking a box on the Form I-140. The Form I-140 version in effect when this petition was filed did not have separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box e of Form I-140 for a professional or skilled worker. The petitioner did not specify elsewhere in the record of proceeding whether the petition should be considered under the skilled worker or professional classification. After reviewing the minimum requirements of the offered position set forth on the labor certification and the standard requirements of the occupational classification

decision, the AAO considered whether the petition may be approved in the professional classification or skilled worker categories. Regarding the instant motion, the AAO will again consider whether the instant petition may be approved in either of these categories.

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 a U.S. bachelor's degree or foreign equivalent degree from a college or university; the job offer portion of the labor certification requires at least a bachelor's degree or foreign equivalent degree; and the beneficiary meets all of the requirements of the labor certification.

It is noted that 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 U.S. Citizenship and Immigration Services (USCIS) or the Service), responded to criticism that the regulation

---

assigned to the offered position by the DOL, the AAO will again consider the petition under both the professional and skilled worker categories.

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 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.

In the instant case, the labor certification states that the beneficiary possesses a Bachelor's degree in Computer Science and Math from , completed in 1990.

The record contains a copy of the beneficiary's certificate of his Bachelor of Science degree and transcripts from issued in 1990. The record reflects that the beneficiary also possesses a postgraduate diploma from .

The record before the AAO prior to its June 20, 2013 decision contained evaluations regarding the beneficiary's credentials from: , Ph.D., for Professor , a former Professor of Physics at the which is now the Ph.D. for ; and Ph.D. of . On motion, the petitioner has submitted an evaluation, dated July 18, 2013, from Professor an evaluator for the , and a faculty member of the

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 (Commr. 1988). 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 the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *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).

The evaluation by Ph.D. of , dated April 29, 2013, concludes that the beneficiary's educational credentials and work experience are equivalent to a "Bachelor of Science (BS) in Mathematics with Concentration in Computer Information Systems." In reaching his conclusion, Dr. referenced the beneficiary's Bachelor of Science and Bachelor of Education degrees from ; his degree certificate from ; his certificate of a post-graduate diploma , certificates in computer-related courses from Microsoft Corporation, USA and from IBM Corporation, USA; and his employment experience. The record does not contain any evidence of the beneficiary's Bachelor of Education degree from .

The AAO stated in its June 20, 2013 decision that Dr. evaluation[3] conflicted with the other evaluations in the record and cited *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988), for the proposition that where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Counsel for the petitioner states on motion that the AAO did not state whether it applied the standard of *Matter of Sea* to Dr. evaluation. Although it appears that the AAO's statements regarding Dr. evaluation tend to indicate that the AAO gave less weight to this evaluation, the AAO will further clarify this matter here. Dr. evaluation reached a conclusion that the beneficiary's Bachelor of Science

[3] It is unclear why the evaluation from Dr. , which is printed on letterhead, contains a footer under the title

degree from is "equivalent to 120 credit hours of academic studies toward a Bachelor of Science Degree (BS) in Mathematics from an accredited college or University in the United States of America." The evaluation from , Ph.D. for on March 2, 2000 concludes that a combination of the beneficiary's Bachelor of Science degree and his postgraduate diploma is equivalent to a U.S. Bachelor's degree in Mathematics with a concentration in Management Information Systems. Therefore, Dr. 's conclusion indicates that the beneficiary's Bachelor of Science degree from alone is not equivalent to a U.S. bachelor's degree. Dr. specifically found that the beneficiary's degree from was only equivalent to three years of post-secondary education. Accordingly, Dr. stated that the beneficiary's Bachelor of Science degree, coupled with his postgraduate diploma, constitutes the equivalent of a U.S. bachelor's degree. The evaluations by Dr. and Mr. conclude that the beneficiary's Bachelor of Science degree from *alone* is the equivalent of 120 credit hours. As these evaluations conflict with Dr. 's conclusion, the persuasive value of each of these evaluations is diminished. Additionally, Dr. evaluation is not supported by the record because the petitioner has failed to submit any evidence of the beneficiary's Bachelor of Education degree from upon which he relies.

On motion, counsel for the petitioner submits an evaluation from Professor for the , dated July 18, 2013, which concludes that the beneficiary's Bachelor of Science and Bachelor of Education degrees from are "the equivalent of a Bachelor of Science degree in Education, with a dual major in Mathematics and Physics, from an accredited US college or university." As stated above, the record does not contain any evidence of the beneficiary's Bachelor of Education degree from , which diminishes the conclusion of this evaluation.

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 is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional.

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.[4] 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.[5]

According to EDGE, a three-year Bachelor of Science degree from is comparable to "three years of university study in the United States."

EDGE also discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE states that a postgraduate diploma following a two-year bachelor's degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States. However, the "Advice to Author Notes" section states:

> Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

The evidence in the record on appeal did not establish that the beneficiary's postgraduate diploma from was issued by an accredited university or institution approved by AICTE.

---

[4] *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.

[5] 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.

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. The petitioner has failed to overcome the conclusions of EDGE with reliable, peer-reviewed information. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

On motion, the AAO will also consider whether the petition may be approved in the skilled worker classification. Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable 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. *See also* 8 C.F.R. § 204.5(l)(2).

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

> If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(l)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

In evaluating 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*, 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 regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *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]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor

certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering 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 Computer Science.
H.5. Training: None required.
H.6. Experience in the job offered: 24 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 24 months of experience as a "Systems Analyst or Programmer Analyst."
H.14. Specific skills or other requirements: "Knowledge of Cognos, SQL, DW Methodologies. Will accept any suitable combination of education, training and experience."

As is discussed above, the beneficiary possesses a three-year Bachelor of Science degree from , which EDGE indicates is the equivalent of three years of university study in the United States. The beneficiary also possesses a postgraduate diploma from but nothing in the record demonstrates that this was issued by an accredited university or institution approved by AICTE.

According to EDGE, a three-year Bachelor of Science degree from is comparable to "three years of university study in the United States." EDGE also concludes that a one-year Bachelor of Education degree from following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." Therefore, it appears that a combination of a Bachelor of Science and Bachelor of Education degree may have the necessary *number of years* of education to equate to a U.S. bachelor's degree, but the record does not indicate that these degrees are in the necessary *field of study*, "Computer Science." The beneficiary's transcripts for his Bachelor of Science do not indicate any courses in "Computer Science," but instead indicate courses in , Physics, Math, Geology, and Additionally, the latest evaluation in the record is from Professor for the and concludes that the beneficiary's Bachelor of Science and Bachelor of Education degrees from are "the equivalent of a Bachelor of Science degree in Education, which a dual major in Mathematics and Physics," which is a different field of study than the labor certification requires. Even if the field of study were established, the record does not contain any evidence of the beneficiary's Bachelor of Education degree from

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in Computer Science.

Prior to its June 20, 2013 decision, the AAO informed the petitioner of EDGE's conclusions in a Request for Evidence (RFE) dated March 19, 2013 and requested that the petitioner submit evidence of its signed recruitment report required by 20 C.F.R. § 656 for the instant position including copies of the prevailing wage determination, all recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts. However, the petitioner did not provide this evidence as requested by the AAO. "The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14)."

.

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 in the field of study required by the labor certification.

In summary, the petitioner has failed to establish that the beneficiary possessed a U.S. bachelor's degree or a foreign equivalent degree from a college or university as of the priority date. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act or as a skilled worker under section 203(b)(3)(A)(i) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted, and the decision of the AAO, dated June 20, 2013, is affirmed. The petition remains denied.