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: MAY 2 9 2014

OFFICE: NEBRASKA SERVICE CENTER

FILE

IN RE: Petitioner:
Beneficiary:

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

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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 December 17, 2012. *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. The director also determined that the petitioner failed to establish that the beneficiary possessed the required work experience. The petitioner asserts on appeal that the beneficiary's experience and educational credentials merit the petition's approval. While we concur that the petitioner has established that the beneficiary's work experience met the requirement of the ETA Form 9089, we do not conclude that the petitioner has established that the beneficiary's educational credentials met the requirements of the labor certification.

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.[1]

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:

[1] 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 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).

> 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 offered position and the beneficiary qualify for the requested preference classification, and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification.

> 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).[2] 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.
>
> . . .
>
> 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.

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

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

> 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 visa classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i). 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.

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 that the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

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*, 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). 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. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] 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]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

As noted in the Notice of Intent to Dismiss and Request for Evidence (NOID/RFE) we issued on April 11, 2014, in this case, the requirements set forth in the labor certification are:

H.4. Education: Bachelor's.
H.4B Major Field of Study: Computer Science.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months.
H.7. Alternate field of study: Yes.
H.7A Acceptable alternate field of study: engineering, math, business administration or related fields of study.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 60 months of experience as analyst, programmer, developer, engineer, consultant, manager, lead.[3]

[3] The remaining part of this sentence is not legible.

H.11. Job Duties:

> provide software development expertise and work as a team lead to maintain and develop improved interfaces for new and existing critical apps. responsible for overseeing design and development of software apps.

H.14. Specific skills or other requirements: any suitable combination of training, education or experience is acceptable.

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a Bachelor's in Industrial Electronics (Engineering) issued by the , Mumbai, India in 2000.

The record contains copies of the beneficiary's educational credentials as follows:

A. A copy of a dated January 10, 1997, issued by the Ministry of Labour, Government of India;

B. A copy of a Diploma in Industrial Electronics, dated October 12, 2000, issued by (India) accompanied by marks sheets. The face of the diploma indicates that it is a "Four-Year Diploma Course."[4]

The record also contains several credentials evaluations:

1. Dr. Evaluator, of the Inc., dated May 10, 2006 and submitted in support of the prior Form I-140 filed on behalf of the beneficiary supported by the same labor certification submitted in the instant proceeding. The evaluation equates the beneficiary's trade certificate for vocational training to one-year of U.S. lower division university-level credit at a community college. Dr. determines that the beneficiary's industrial electronics diploma is the U.S. equivalent of two years of university credit and combined with the beneficiary's work experience, (using a formula of three years of experience equaling one year of undergraduate credit),[5] he concludes that the beneficiary has the U.S. equivalent of a Bachelor's in Computer Information Systems.

---

[4]These credentials were submitted in support of a Form I-140 filed previously, using the same labor certification but seeking a visa classification of an advanced degree professional. That petition was denied on July 10, 2013.

[5] This evaluation used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*).

2. [redacted] Professor in Computer Science Department, [redacted], dated June 13, 2013, and submitted in support of the prior Form I-140 filed on behalf of the beneficiary supported by the same labor certification submitted in the instant proceeding. Professor [redacted] #1) determines that the combination of the beneficiary's trade certificate of vocational training and his diploma from [redacted] combined with work experience in the field equates to the U.S. equivalent of a Bachelor of Science in Engineering with specialties in Electronics.
3. [redacted] Professor in Computer Science Department, [redacted] also dated June 13, 2013, and submitted in support of the instant petition. In this evaluation, Professor [redacted] #2) states that the beneficiary's diploma from [redacted] itself is the U.S. equivalent of a Bachelor of Science in Engineering with specialties in Electronics.
4. [redacted] Professor in Computer Science Department, [redacted] dated September 1, 2013, represents Professor [redacted] explanation for the contradictions between the two earlier evaluations. He claims that he previously intended in both the first and second evaluations that the beneficiary's academic education alone from [redacted] represented a U.S. equivalent of a Bachelor of Science in Engineering with specialties in Electronics.
5. [redacted] Ph.D. Professor [redacted] Management and Information Systems, [redacted] dated September 3, 2013, submitted in support of the instant petition. Professor [redacted] states that based on a review of the beneficiary's critical courses completed as part of his diploma requirements from [redacted] this represents the U.S. equivalent of a Bachelor's degree in Engineering with a concentration in Electronics.

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).

As indicated in the NOID/RFE, the conclusions reached by the credentials evaluations cannot be corroborated by other information about Indian education and U.S. equivalencies. As advised in the NOID/RFE, we consulted the Electronic Database for Global Education (EDGE) created by the

American Association of Collegiate Registrars and Admissions Officers (AACRAO), and also consulted a representative of EDGE/AACRAO directly about this beneficiary's educational credentials. USCIS considers AACRAO/EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[6] According to EDGE, an Indian post-secondary diploma is awarded upon completion of one to two years of tertiary study beyond the Higher Secondary Certificate (or equivalent).[7]

As indicated in the NOID/RFE, EDGE additionally discusses the difference between post-secondary diplomas for which the entrance requirement is completion of secondary education, and postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE provides that a postsecondary diploma is comparable to one year of university study in the United States. EDGE further 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, but advises the following:

> 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.

As stated in the NOID/RFE, we found that the record does not contain any evidence establishing that the beneficiary's course of study at represented a post-graduate

---

[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. v. USCIS*, 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.

[7] It is additionally noted that although an example of an Indian diploma in Industrial Electronics is not shown in EDGE, both a Diploma in Engineering and a Diploma in Teacher Training are given. These credentials are both described as being awarded after 3 years of study beyond a Secondary School Certificate and comparable of up to 1 year of U.S. university study taken from the final year of the 3-year program.

diploma issued by an accredited university or that a three-year bachelor's degree was required for admission into the program of study. There is additionally no evidence that the diploma obtained by the beneficiary at was accomplished when that institution was accredited by AICTE.

We requested the petitioner to submit evidence that the beneficiary's course of study at represents a post-graduate diploma that required a three-year bachelor's degree for admission at the time of the beneficiary's admission or was AICTE accredited at the time of the beneficiary's attendance.[8]

The petitioner's response to the NOID/RFE did not include any evidence that the beneficiary's diploma from represents a post-graduate diploma that required a three-year bachelor's degree for admission at the time of the beneficiary's admission or was AICTE accredited at the time of the beneficiary's attendance. Instead, the petitioner states that the skilled worker category only requires a minimum of two years of experience or training and that a single source degree is not required for the beneficiary to be approved as a skilled worker. "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)."

The petitioner also asserts in response to the NOID/RFE that the ETA Form 9089 allows "any suitable combination of training, education and/or experience" so that the beneficiary's educational qualifications may be sufficient to be qualified for the visa category.

The petitioner's assertion is based on the regulation at 20 C.F.R. § 656.17(h)(4)(ii), which states:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

This regulation was intended to incorporate the Board of Alien Labor Certification Appeals (BALCA) ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (Feb. 2, 1998) (en banc), that "where the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chosen to list alternative job requirements, the employer's alternative requirements are unlawfully tailored to the alien's qualifications . . . unless the employer has indicated that applicants with any suitable combination of education, training or experience are

---

[8] The NOID/RFE stated the EDGE indicated that offers a 3-year diploma program in Industrial Electronics but was not AICTE-accredited until July 20, 2005, which is five years after the beneficiary's attendance.

acceptable." The statement that an employer will accept applicants with "any suitable combination of education, training or experience" is commonly referred to as "*Kellogg* language."

Previously, the DOL was denying labor certification applications containing alternative requirements in Part H, Question 14, if the application did not contain the *Kellogg* language. However, two BALCA decisions have significantly weakened this requirement. In *Federal Insurance Co.*, 2008-PER-00037 (Feb. 20, 2009), BALCA held that the ETA Form 9089 failed to provide a reasonable means for an employer to include the *Kellogg* language on the labor certification. Therefore, BALCA concluded that the denial of the labor certification for failure to write the *Kellogg* language on the labor certification application violated due process. Also, in *Matter of Agma Systems LLC*, 2009-PER-00132 (BALCA Aug. 6, 2009), BALCA held that the requirement to include *Kellogg* language did not apply when the alternative requirements were "substantially equivalent" to the primary requirements.

Given the history of the *Kellogg* language requirement at 20 C.F.R. § 656.17(h)(4)(ii), we do not generally interpret this phrase when included as a response to Part H, Question 14, to mean that the employer would accept lesser qualifications than the stated primary and alternative requirements (if any) on the labor certification. To do so would make the actual minimum requirements of the offered position impossible to discern, it would render largely meaningless the stated primary and alternative requirements of the offered position on the labor certification. In other words, we do not consider the presence of *Kellogg* language in a labor certification to have any material effect on the interpretation of the minimum requirements of the job.

The petitioner specifically stated on the ETA Form 9089 that no alternate combination of education and experience is acceptable. Nonetheless, the NOID/RFE also requested that the petitioner submit evidence of its intent to accept less than a single source bachelor's degree. Specifically, the NOID/RFE requested that the petitioner provide a copy of the signed recruitment report, along with copies of the prevailing wage determination, all online, print and additional recruitment conducted for the position, the job order, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts. We also requested that any other correspondence with DOL be included that may be probative of the petitioner's intent. The petitioner submitted no evidence to demonstrate its intent to accept an alternate combination of education and experience.

Following a review of the beneficiary's educational credentials, we conclude that the beneficiary does not have a bachelor's degree at all, single source or otherwise. As further noted in the NOID/RFE:

> Additionally, the AAO has specifically consulted with an AACRAO/EDGE representative regarding the beneficiary's educational credentials. He determined that the beneficiary's Provisional National Trade Certificate representing apprenticeship training cannot be accorded academic credit as it represents vocational and not classroom education under the Indian Ministry of Education

> auspices. With respect to the beneficiary's diploma from the beneficiary's transcripts indicate that his four-year course of study was part-time as indicated by "PT" in the upper right corner. It was determined that even if the beneficiary's course of study at had been accredited by AICTE at the time of the beneficiary's attendance, which it does not appear that it was, it would have represented no more than the U.S. equivalent of one year of university-level undergraduate study.

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, engineering, math, business administration or related fields of study.

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 educational equivalent. The petitioner has provided no evidence that the labor certification permits a specific alternate combination of lesser degrees, diplomas and/or a quantifiable amount of experience to the Bachelor's degree requirement. The educational requirements of the offered position are clearly set forth on the labor certification.[9] The petitioner failed to establish that the beneficiary met the minimum

---

[9] We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the Form ETA 750, prior version of the labor certification 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 consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* 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. *Snapnames.com, Inc.* at *14. Further, 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* (D.D.C. Mar. 26, 2008)(upholding USCIS interpretation that the term "bachelor's or equivalent" on the labor certification necessitated a single four-year degree).

The DOL has also provided the following field guidance: "When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." *See* Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). The DOL's certification of job requirements stating that "a certain amount and kind of experience is the

educational requirements of the offered position set forth on the labor certification by the priority date. Therefore, the beneficiary does not qualify for classification 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 appeal is dismissed.

---

equivalent of a college degree does in no way bind [USCIS] to accept the employer's definition." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). The DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.