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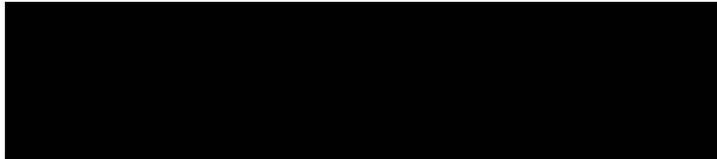
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: [REDACTED]
SRC 07 800 13744

Office: TEXAS SERVICE CENTER Date: APR 28 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 a software consulting and development firm. It seeks to employ the beneficiary permanently in the United States as a web administrator pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's basis for denial, as the evidence submitted on appeal is not consistent with prior claims. In addition, even if the petitioner had overcome that ground of denial, the petition would not be approvable. As will be discussed below, we do not find that the petitioner's response to the director's request for additional evidence overcomes the director's initial concern regarding whether the beneficiary has the necessary education and experience for the classification sought. Thus, had the petitioner overcome the director's basis for denial, the petition would not be approvable on the record as it now stands.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). Here, the Form ETA 750 was accepted for processing on March 16, 2005. The proffered wage as stated on the Form ETA 750 is \$85,000 annually. On the Form ETA 750B, signed by the beneficiary, the beneficiary did not claim to have worked for the petitioner.

On the petition, the petitioner claimed to have an establishment date in 1996, a gross annual income of \$5,831,078, a net income of \$365,508 and 65 employees. In support of the petition, the petitioner submitted its Internal Revenue Service (IRS) Form 1120S Income Tax Returns for an S Corporation

for the years 2005 and 2006. As will be discussed below, these returns reflect a large net income in both years.

On May 23, 2007, the director advised the petitioner that it had filed multiple Form I-140 petitions and requested evidence that the petitioner had the ability to pay the proffered wage for all of the beneficiaries of these petitions as of the priority date.

In response, counsel acknowledged that the petitioner had filed three other petitions with priority dates in 2005 and asserted that the petitioner had paid one of them \$107,200, more than the proffered wage of \$84,000 for that beneficiary. Counsel further acknowledged that the petitioner had filed three petitions with priority dates in 2006 and asserted that the petitioner had been paying two of them more than the proffered wage and had paid the third one only \$15,000 less than the proffered wage. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner did not submit its quarterly wage and withholding returns for 2005 and 2006 confirming that the petitioner did, in fact, employ and pay these other beneficiaries as claimed. The petitioner submitted copies of the petitioner's checking account statements for the period from January 2007 through June 2007.

The director denied the petition, concluding that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage for all of the beneficiaries with priority dates in 2005 and 2006.

On appeal, the petitioner submits several Forms W-2 it issued in 2005 and 2006, some of which relate to the beneficiaries of the petitioner's recent petitions. As will be discussed in more detail below, the Forms W-2 in the aggregate do not reflect the amount of wages claimed by the petitioner on its tax returns and are inconsistent with the claims counsel has made on behalf of the petitioner regarding how much individual beneficiaries have been paid.

Where the petitioner has submitted the requisite initial documentation required in the regulation at 8 C.F.R. § 204.5(g)(2), U.S. Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed and paid the beneficiary during the relevant period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner did not establish that it employed and paid the beneficiary the full proffered wage in 2005 or 2006.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Federal courts have recognized the reliance on federal income tax returns as a valid basis for determining a petitioner's ability to pay the proffered wage. See *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986). See also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532, 536 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080, 1083

(S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647, 650 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient. In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

Nevertheless, the petitioner's net income is not the only statistic that can be used to demonstrate a petitioner's ability to pay a proffered wage. If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's assets. We reject, however, any argument that the petitioner's total assets should be considered in the determination of the ability to pay the proffered wage. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, USCIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

On appeal, counsel asserts that the petitioner documented large net current assets in both 2005 and 2006. Those numbers do not conform with the current assets and current liabilities listed on the petitioner's Forms 1120. Net current assets are the difference between the petitioner's current assets and current liabilities.¹ A corporation's year-end current assets are shown on Schedule L, lines 1(d) through 6(d). Its year-end current liabilities are shown on lines 16(d) through 18(d). If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets.

The tax returns reflect the following information for the following years:

	2005	2006
Net income	\$328,030	\$365,508
Current Assets	\$9,895	\$9,400
Current Liabilities	\$144,000	\$50,000
Net current assets	(\$134,105)	(\$40,600)

¹ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

If the petitioner had not filed multiple petitions, we acknowledge that the petitioner's net income would suffice to establish its ability to pay the proffered wage for the beneficiary of the instant petition in 2005 and 2006. In 2006 and 2007, however, the petitioner filed at least 28 petitions in addition to the instant petition before us. It is necessary for the petitioner to demonstrate that it has the ability to pay the beneficiaries of all of these petitions with priority dates in 2005 and 2006 that have not been withdrawn or denied and are no longer being pursued.

Counsel requests that USCIS prorate the proffered wage in 2005 for the portion of the year that occurred after the priority date. We will not, however, consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While USCIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), the petitioner has not submitted such evidence.

The Forms W-2 for 2005 demonstrate aggregate wages of \$866,364.08, \$1,442,857.92 less than the wages claimed by the petitioner on its Form 1120S for that year. The Forms W-2 for 2006 demonstrate aggregate wages of \$1,140,696.46, \$1,874,222.54 less than the wages claimed by the petitioner on its Form 1120S for that year. Moreover, the petitioner submitted 19 Forms W-2 for 2005 and for 2006, far less than can account for the 65 employees claimed on the petition. The petitioner did not submit Form W-3 indicating the total number of Forms W-2 issued in 2005 or 2006 or its quarterly wage and withholding reports document wages paid to all of its employees.

More significantly, the wages listed on the Forms W-2 are not consistent with counsel's statements. The most serious discrepancies follow. In response to the director's request for additional evidence, counsel asserted that [REDACTED] was paid \$93,000 and [REDACTED] was paid \$70,000 in 2006. Counsel reiterates these claims on appeal. In fact, the Forms W-2 reflect that the petitioner paid G. [REDACTED] \$27,412.50 in 2005 and \$29,143.10 in 2006. The petitioner paid [REDACTED] \$6,396 in 2005 and \$47,385.75 in 2006. Also in response to the director's request for additional evidence and on appeal, counsel asserted that the petitioner paid [REDACTED] \$107,200 in 2005. In fact, the Forms W-2 reflect that the petitioner paid [REDACTED] \$61,171.20 in 2005 and \$82,450.15 in 2006.

The following chart compares counsel's assertions on appeal with the actual wages reflected on the submitted Forms W-2.

<u>Employee</u>	<u>Annual wage per counsel</u>	<u>2005 W-2</u>	<u>2006 W-2</u>
[REDACTED]	\$93,000	No W-2	No W-2
[REDACTED]	\$120,000	\$57,341.60	\$65,340
[REDACTED]	\$124,000	\$70,782	\$86,983
[REDACTED]	\$84,000	\$7,933.36	\$44,572.55

² While counsel spelled the last name of this beneficiary "[REDACTED]" the receipt number for this individual provided by counsel, SRC-07-141-51766, relates to [REDACTED]

While counsel also overstated the amounts earned by other beneficiaries, the amounts by which he did so are not as significant. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel's assertions are either not supported by evidence or, as explained above, contradicted by the evidence. Thus, counsel's assertion that the difference between the proffered wages for all of the beneficiaries and the wages paid for all of the beneficiaries with priority dates in 2005 and 2006 is less than the petitioner's net income in 2005 and 2006 cannot be considered persuasive.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The evidence, as discussed above, is utterly inconsistent with counsel's assertions on behalf of the petitioner. Moreover, the Forms W-2 are not consistent with the number of employees claimed on the Form I-140 petition or the wages listed on the petitioner's tax returns. The petitioner has not resolved these inconsistencies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Without more consistent evidence establishing that the petitioner is paying the proffered wages claimed by counsel, we cannot conclude that the petitioner has established that it has the ability to pay the proffered wage of all the beneficiaries for which it has filed.

We acknowledge the submission of bank statements for 2007. Counsel's reliance on the balances in the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the cash specified on Schedule L considered above in determining the petitioner's net current assets. Regardless, bank statements for 2007 cannot establish the petitioner's ability to pay in 2005 or 2006. The petitioner has not demonstrated that any other funds were available to pay the proffered wage during those years.

Finally, we acknowledge the submission of evidence that the petitioner has a line of credit with Bank of America. The petitioner's existent loans will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the corporation's net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. However, if the petitioner wishes to rely on a line of credit as evidence of ability to pay, the petitioner must submit documentary evidence, such as a detailed

business plan and audited cash flow statements, to demonstrate that the line of credit will augment and not weaken its overall financial position. Finally, USCIS will give less weight to loans and debt as a means of paying salary since the debts will increase the firm's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, USCIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l. Comm'r. 1977).

The petitioner failed to submit evidence sufficient to demonstrate that it had the ability to pay the proffered wage of all of the beneficiaries for whom it has filed during 2005 or subsequently during 2006. Therefore, the petitioner has not established that it had the continuing ability to pay the proffered wage beginning on the priority date.

Even if the petitioner had established its ability to pay all of its beneficiaries, this petition would not be approvable. In pertinent part, as stated above, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The beneficiary possesses a foreign three-year bachelor's degree and a Master of Science in computer science from Andhra University. The beneficiary obtained his Master's degree in June 2000. The priority date in this matter, as stated above, is March 16, 2005, less than five years after the beneficiary obtained his Master's degree. As the beneficiary could not have acquired five years of experience after he obtained his Master's degree prior to the date of filing, the petitioner must demonstrate that the beneficiary had a foreign equivalent degree to a U.S. baccalaureate prior to June 2000 or that the beneficiary's Master of Science degree is a foreign equivalent degree to a U.S. advanced degree if the beneficiary is to qualify as a member of the professions holding an advanced degree.

The record contains two evaluations, one solely evaluating the beneficiary's two-year Master's degree and a second evaluation considering all of the beneficiary's education. The first evaluation, dated May 9, 2007 is from [REDACTED], a member of the American Association of Collegiate Registrars and Admissions Officer (AACRAO), and asserts that the beneficiary's Master of Science degree is equivalent to a U.S. Master of Science degree. In response to the director's request for additional evidence, the petitioner submitted a new evaluation, dated June 15, 2007, from [REDACTED] of IndoUS Technology and Educational Services, Inc. [REDACTED] concludes that the beneficiary's three-year baccalaureate is equivalent to 90 credits towards a U.S. baccalaureate and that the beneficiary's Master's degree is equivalent to a U.S. baccalaureate. [REDACTED] is only able to conclude that the beneficiary has the equivalent of a U.S. Master's degree by considering the beneficiary's experience, some of which occurred prior to the beneficiary's receipt of his Master's

degree. Thus, not all of the experience is post-baccalaureate as required by the regulation at 8 C.F.R. § 204.5(k)(2).

As noted above, the ETA 750 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. See *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. See *N.L.R.B. v. Ashkenazy Property Management Corp.* 817 F. 2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated).

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

Visas shall next be made available . . . to qualified immigrants who are members of the professions

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (October 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien “must have a bachelor’s degree” when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency’s previous treatment of a “bachelor’s degree” under the Act when the new classification was enacted and did not intend to alter the agency’s interpretation of that term. See *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). See also 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor’s degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (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:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because neither the Act nor its legislative history indicates that bachelor’s or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both 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 (Nov. 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)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree prior to the five years of post-baccalaureate experience. More specifically, a three-year bachelor’s degree will not be considered to be the “foreign equivalent degree” to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the “foreign equivalent degree” to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor’s degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

As the beneficiary's three-year degree is not a foreign equivalent degree to a U.S. baccalaureate, not all of the experience acquired after that degree is post-baccalaureate. Thus, we must consider the beneficiary's Master of Science degree. As discussed above, the petitioner has submitted two contradictory evaluations of the beneficiary's education.

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). 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)).

Given the inconsistencies between the two evaluations and [REDACTED] membership in AACRAO, we have reviewed the Electronic Database for Global Education (EDGE) created by the AACRAO. AACRAO, according to its website, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." AACRAO, <http://www.aacrao.org/about/> (accessed April 23, 2009, copy incorporated into the record of proceeding). Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. Dale E. Gough, Director of International Education Services, "AACRAO EDGE Login," <http://aacraoedge.aacrao.org/index.php> (accessed April 23, 2009, copy incorporated into the record of proceeding).

Authors for EDGE are not merely expressing their personal opinions. Rather, 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. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. 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.* at 11-12.

In the section related to the Indian educational system, EDGE provides that a Master of Science following a three-year bachelor's degree "represents the attainment of a level of education comparable to a bachelor's degree in the United States." (Accessed April 23, 2009 and incorporated into the record of proceeding.) This information is consistent with [REDACTED] evaluation but inconsistent with [REDACTED] evaluation.

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 record does not resolve the inconsistency between the two evaluations submitted. The outside materials reviewed by this office support [REDACTED] evaluation, which reveals that the beneficiary's Master of Science degree is only equivalent to a U.S. baccalaureate.

As the beneficiary does not have the requisite five years of experience beginning after he obtained his Master of Science degree, we cannot conclude that he qualified as a member of the professions holding an advanced degree as of the priority date in this matter, the date as of which the petitioner must establish the beneficiary's eligibility. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

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

ORDER: The appeal is dismissed.

[REDACTED]